United Nations TD/B/C.I/CPLP/11

United Nations Conference on Trade and Development

Distr.: General
30 April 2018

Original: English

Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Consumer Protection Law and Policy
Third session
Geneva, 9 and 10 July 2018
Item 3 (d) of the provisional agenda

Dispute resolution and redress

Note by the UNCTAD secretariat

Executive summary

This note considers the issue of consumer dispute resolution and redress in the light of the United Nations guidelines for consumer protection. It introduces the rationale for and the legal nature of dispute resolution and redress, and presents current avenues for delivering resolution and redress, namely through courts, collective redress, public regulatory and enforcement action, ombudspersons, alternative dispute resolution, online dispute resolution and business customer care and complaint functions. In addition, the note provides policy options for member States implementing the guidelines on dispute resolution and redress and proposes questions for discussion by the third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy.

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Introduction

1. The right of consumers to redress is at the centre of modern consumer protection policy. In an address to the Congress of the United States of America in 1962, President John F. Kennedy stated that consumer rights included "the right to be heard – to be assured that consumer interests will receive full and sympatheti consideration [and] fair and expeditious treatment [in] tribunals".[1] The preliminary programme of the European Economic Community for a consumer protection and information policy, with regard to redress, stated as follows: "Consumers should receive advice and help in respect of complaints and of injury or damage resulting from purchase or use of defective goods or unsatisfactory services. Consumers are also entitled to proper redress for such injury or damage by means of swift, effective and inexpensive procedures."[2]

2. The right of consumers to access dispute resolution and to obtain redress should be considered in the wider context of the right of consumers to access justice. For consumer rights to be effective, they need to be enforceable, and any damage suffered by consumers should allow for adequate redress. Aggrieved consumers should also be able to solve disputes with businesses in a fair, affordable and swift manner. Access to justice in the context of consumer protection is also related to the responsibility of government authorities to receive and act upon consumer complaints, either to undertake enforcement action to promote effective compliance with consumer protection laws and/or to obtain or facilitate redress for consumers. Such responsibility is key to ensuring healthy markets that increase the welfare of consumers and contribute to more inclusive and sustainable development. With regard to consumer dispute resolution and redress, government authorities usually involve consumer protection enforcement agencies and sectoral regulators.

3. The General Assembly has reaffirmed the United Nations guidelines for consumer protection as "a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are suitable to their own economic and social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in consumer protection".[3] The guidelines are the only internationally agreed instrument on consumer protection, and have been widely implemented by UNCTAD member States.[4]

4. One of the legitimate needs that the guidelines are intended to meet is the availability of effective consumer dispute resolution and redress (para. 5 (g)), and section V.F is devoted to dispute resolution and redress. Other guidelines contain recommendations for businesses on consumer complaints and disputes (para. 11 (f)) and for Member States to establish consumer protection policies that encourage fair, affordable and speedy dispute resolution and redress, and to work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to obtain or facilitate redress (paras. 14 and 15); develop consumer education and information programmes that cover relevant legislation and how to access dispute resolution mechanisms and obtain redress (para. 44 (d)); formulate, maintain or strengthen national policies to improve rules and statutes dealing with dispute resolution between consumers and utility service providers (para. 77); and consider participating in multilateral and bilateral arrangements to improve international judicial and inter-agency cooperation in the recovery of foreign assets and the enforcement of decisions in cross-border cases (para. 89).

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[1] JF Kennedy, 1962, Special message to Congress on protecting the consumer interest, address to the United States Congress, 15 March.

[2] European Economic Community, 1975, Preliminary programme of the European Economic Community for a consumer protection and information policy, 25 April.

[3] A/RES/70/186.

[4] TD/B/C.I/CLP/23.

5. Other relevant international instruments that address consumer dispute resolution and redress include the European Commission recommendation of 30 March 1998 on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, recommendation of 4 April 2001 on the principles for out-of-court bodies involved in the consensual resolution of consumer disputes and communication dated 4 April 2001 on widening consumer access to alternative dispute resolution; the European Union directive of 21 May 2013 on alternative dispute resolution for consumer disputes and regulation of 21 May 2013 on online dispute resolution for consumer disputes; the Organization for Economic Cooperation and Development recommendation on consumer dispute resolution and redress;[5] the United Nations Commission on International Trade Law notes on online dispute resolution;[6] and the International Chamber of Commerce best practices for online dispute resolution in business to consumer and consumer to consumer transactions.

6. The second session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy, held in July 2017, requested the UNCTAD secretariat to prepare reports and studies for the third session, including on dispute resolution and redress, taking into account input from member States and other relevant stakeholders.[7] In this regard, the secretariat circulated a questionnaire, and received inputs from 32 member States, one international organization, one non-governmental organization and one academic institution.[8]

7. This note presents the rationale for and the legal nature of consumer dispute resolution and redress, as well as different avenues for providing resolution and redress. It includes policy options for member States implementing the guidelines for consumer protection and questions for discussion by the third session of the Intergovernmental Group of Experts.

I. Dispute resolution and redress: Rationale and legal nature

8. The General Assembly, in resolution 67/1, emphasized the right of equal access to justice for all, including members of vulnerable groups, and the importance of awareness-raising concerning legal rights, and in this regard committed to taking all necessary steps to provide fair, transparent, effective, non-discriminatory and accountable services that promote access to justice for all, including legal aid. The European Commission, in a green paper on alternative dispute resolution in civil and commercial law dated 19 April 2002 noted as follows: "Access to justice is an obligation which is met by the member States through the provision of swift and inexpensive legal proceedings. Moreover, certain member States have undertaken to modernize their legal system by simplifying referral procedures or by envisaging the possibility of taking legal action by electronic means."[9]

9. In line with the development of access to justice, the guidelines for consumer protection were updated. The previous version included a section on measures enabling consumers to obtain redress.[10] The revision, in section V.F, guidelines 37–41, addresses dispute resolution and redress (box 1).

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[5] Organization for Economic Cooperation and Development, 2007, *Recommendation on Consumer Dispute Resolution and Redress*, Paris.

[6] See http://www.uncitral.org/uncitral/commission/working_groups/3Online_Dispute_Resolution.html.

[7] TD/B/C.I/CPLP/9.

[8] Argentina, Belgium, Bulgaria, Chile, Colombia, Costa Rica, Cyprus, Egypt, El Salvador, France, Germany, Greece, Lebanon, Lithuania, Mauritius, Mexico, Morocco, Myanmar, Netherlands, Oman, Panama, Peru, Philippines, South Africa, Spain, Sri Lanka, Swaziland, Sweden, Switzerland, United Republic of Tanzania, United States, Zambia, Eurasian Economic Community, Consumers International and University of Sydney, Australia.

[9] See https://publications.europa.eu/en/publication-detail/-/publication/61c3379d-bc12-431f-a051-d82fefc20a04.

[10] E/1999/INF/2/Add.2.

Box 1
United Nations guidelines for consumer protection, section V.F: Dispute resolution and redress

37. Member States should encourage the development of fair, effective, transparent and impartial mechanisms to address consumer complaints through administrative, judicial and alternative dispute resolution, including for cross-border cases. Member States should establish or maintain legal and/or administrative measures to enable consumers or, as appropriate, relevant organizations to obtain redress through formal or informal procedures that are expeditious, fair, transparent, inexpensive and accessible. Such procedures should take particular account of the needs of vulnerable and disadvantaged consumers. Member States should provide consumers with access to remedies that do not impose a cost, delay or undue burden on the economic value at stake and at the same time do not impose excessive or undue burdens on society and businesses.

38. Member States should encourage all businesses to resolve consumer disputes in an expeditious, fair, transparent, inexpensive, accessible and informal manner, and to establish voluntary mechanisms, including advisory services and informal complaints procedures, which can provide assistance to consumers.

39. Information on available redress and other dispute-resolving procedures should be made available to consumers. Access to dispute resolution and redress mechanisms, including alternative dispute resolution, should be enhanced, particularly in cross-border disputes.

40. Member States should ensure that collective resolution procedures are expeditious, transparent, fair, inexpensive and accessible to both consumers and businesses, including those pertaining to overindebtedness and bankruptcy cases.

41. Member States should cooperate with businesses and consumer groups in furthering consumer and business understanding of how to avoid disputes, of dispute resolution and redress mechanisms available to consumers and of where consumers can file complaints.

Source: A/RES/70/186.

10. Consumer dispute resolution and redress have a distinct legal nature. According to the Organization for Economic Cooperation and Development, dispute resolution refers to "the use of mechanisms designed to provide consumers who have suffered economic harm resulting from transactions involving goods or services, including transactions across borders, the opportunity to resolve their complaints against businesses and to obtain redress" and redress refers to "compensation for economic harm, whether in the form of a monetary remedy (e.g. a voluntary payment, damages, restitution or other monetary relief) or a conduct remedy with a restorative element (e.g. exchange of a good or service, specific performance or rescission of a contract)".[11]

11. Dispute resolution refers to a transactional settlement of disputes between consumers and businesses, while redress usually presupposes the enforcement of consumer rights through corrective or complementary measures. Corrective measures are those aimed at compensating consumers and ensuring reparations for any unlawful damages. Complementary measures are those aimed at ensuring general consumer interests, such as with regard to health or the environment. Measures aimed at ensuring consumer redress can be adopted through administrative, judicial or alternative dispute settlement procedures, depending on the jurisdiction. Most consumer protection laws confer enforcement power upon consumer protection authorities, including for corrective and complementary measures, yet compensation is usually reserved for judicial authorities.[12]

12. Where alternative dispute resolution is administered by non-State bodies, that is, by private out-of-court alternative dispute resolution entities, most countries impose additional

[11] Organization for Economic Cooperation and Development, 2007.
[12] TD/B/C.I/CLP/23, paras. 25 and 26.

legal requirements to guarantee a minimum standard of expertise and due process, in particular with regard to independence, transparency, effectiveness, legality, liberty and representation and the adversarial principle.[13] The aim is to ensure that dispute resolution is delivered with the necessary knowledge and skills, in a fair way, and to ensure supervision according to relevant criteria by State authorities.

13. An integral treatment of dispute resolution and redress ensures that consumer disputes are dealt with effectively while consumer interests are adequately protected. According to one study, designers and operators of consumer dispute resolution systems "recognize that consumer dispute resolution is at least as much about market regulation as it is about dispute resolution", fulfilling additional important functions related to consumer advice, data aggregation and dissemination and market behaviour improvement.[14] Further, there is at present a normative scepticism, involving the desire to move away from judicial redress towards out-of-court dispute resolution mechanisms, which reinforces the need to maintain a holistic approach to the different avenues available to consumers to access dispute resolution and obtain redress.[15]

14. Dispute resolution and redress can contribute to fostering consumer trust and building more competitive markets. The European Commission estimates that well-functioning and transparent alternative consumer dispute resolution could save an annual €22.5 billion, or 0.19 per cent of the gross domestic product of the European Union.[16]

II. Dispute resolution and redress: Avenues for delivery

15. Consumers may make complaints for various reasons (box 2). The UNCTAD *Manual on Consumer Protection* identifies the following pathways for delivering consumer dispute resolution and redress: courts, collective redress, public regulatory and enforcement action, ombudspersons, alternative dispute resolution, online dispute resolution and business customer care and complaint functions.

Box 2
Why consumers make complaints

Consumers may make complaints for the following reasons:

(a) The need to resolve a problem such as the following:

(i) Unprofessional service (30 per cent of complaints): More likely in public sectors (40 per cent) than regulated (24 per cent) and non-regulated sectors (28 per cent);

(ii) Product or service not up to standard (25 per cent): More likely in non-regulated sectors (32 per cent) than regulated (22 per cent) and public sectors (21 per cent);

(iii) Poor information provided (19 per cent): More likely in public sectors (26 per cent) than non-regulated (15 per cent) and regulated sectors (16 per cent);

(iv) Problems with charges, fees or bills (18 per cent): More likely in regulated sectors (27 per cent) than non-regulated (10 per cent) and public sectors (11 per cent);

[13] European Commission, 1998, Recommendation on the principles applicable to the bodies responsible for out-of-court settlement of consumer disputes, 30 March; European Commission, 2013, Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the member States concerning violations of rights granted under Union law, 11 June.

[14] C Hodges, 2016, Consumer redress: Implementing the vision, In: P Cortés, *The New Regulatory Framework for Consumer Dispute Resolution*, Oxford University Press, Oxford: 351–369.

[15] S Prince, 2016, Access to court?, In: Cortés: 79–100.

[16] See https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1524571549264&uri=CELEX:52011SC1408.

(b) The desire to obtain an apology or reassurance that steps will be taken to prevent recurrence, in order to prevent the situation happening to others.

Source: Citizens Advice, 2016, *Understanding Consumer Experiences of Complaint Handling*, available at https://www.citizensadvice.org.uk/about-us/policy/policy-research-topics/consumer-policy-research/consumer-policy-research/understanding-consumer-experiences-of-complaint-handling/

A. Courts

16. Access by consumers to judicial redress is common to all UNCTAD member States.[17] The traditional adversarial system has evolved in the light of the specificities of consumer disputes. First, consumer protection law presumes an imbalance that favours businesses over consumers. The information and bargaining power asymmetry between consumers and businesses justifies supplementing traditional civil court procedures with specific models to provide consumers with a level playing field for settling disputes and defending their rights. Second, judicial proceedings can present significant barriers for consumers. The cost of pursuing proceedings, including exposure to adverse costs if a case is lost, the lengthy duration of procedures, the complexity of the law and legal procedures, the costly requirements of legal assistance and, in particular, the low economic value of claims, serve to dissuade consumers from undertaking ordinary judicial claims.

17. Some countries have introduced palliative measures to make judicial proceedings more consumer friendly. For example, Germany has widely available insurance for legal claims and provides free legal aid to consumers. Oher countries have established small claims tribunals for claims of low financial value. For cross-border claims, the European Union has introduced a small claims procedure enforceable through the national court of the consumer's country of residence.

B. Collective redress

18. Since individual consumer claims generally have a low value, aggregation into class or collective action can provide significant avenues of redress for consumers. Collective redress can arise when "consumers who have suffered the same or very similar loss or harm caused by the same trader come together and seek redress in court as a group, in one legal claim".[18] In this note, collective redress is considered similar to collective litigation, although it has been noted that redress is a goal, litigation a technique and dispute resolution a regulation.[19] The use of class action as a form of collective redress is established in, for example, Chile and the United States, as it empowers consumers and evens the playing field in their disputes with better funded and superiorly situated fraudulent businesses.[20] This trend has been slowly introduced in Europe, where admissibility criteria are stricter.[21]

19. As recommended in the guidelines for consumer protection, a growing number of countries are granting consumer organizations locus standi to defend not only individual claims but also collective ones (para. 37).[22] Many countries allow representative claims by consumer associations for injunctions to protect collective consumer interests, yet the use of collective damages claims by consumer organizations is less widespread. For example,

[17] TD/B/C.I/CLP/23.

[18] The European Consumer Organization, 2017, *European Collective Redress: What is the European Union Waiting For?* Brussels.

[19] C Hodges, 2014, Collective redress: A breakthrough or a damp squib? *Journal of Consumer Policy*, 37: 67–89.

[20] Teller v. Bill Hayes Limited, 1995.

[21] The European Consumer Organization, 2017, *Where Does Collective Redress for Individual Damages Exist?* Brussels.

[22] UNCTAD, 2012, Revisión de las Directrices de Naciones Unidas sobre Protección al Consumidor, presented at the second International Consumer Protection Forum, 11 and 12 November, Lima.

Algeria, China, France, Morocco and Peru, among others, require specific accreditation from government authorities for consumer organizations to act.

20. A significant difference among collective redress models is in the method of participation of consumers in collective claims. The United States has an opt-out model, whereby consumers are part of a collective action unless they take specific steps to exclude themselves.[23] The European Union has an opt-in model, whereby consumers must take specific steps to join a collective action.[24] Chile allows consumers to either opt in before proceedings begin, opt out within 30 days after the second call for affected consumers or wait until a decision is final to benefit from its effects.

C. Public regulatory and enforcement action

21. An effective technique for delivering redress to consumers is to empower public enforcement authorities with the possibility of collective regulatory redress, whereby they can order or seek a court to order redress.[25] Most countries in Latin America, as well as some countries in Asia, Africa and Western Asia allow for corrective and complementary measures to obtain redress for consumers either directly, by administrative procedure, or before a judge, through an injunction.[26] For example, in 2017, enforcement action by the Federal Trade Commission of the United States resulted in more than $6.4 billion in consumer refunds through judicial settlements, mainly from the settlement of two cases.[27]

22. Some countries provide for dispute resolution, such as through conciliation, coupled with enforcement. For example, in the context of government-sponsored conciliation in Mexico, which is compulsory for businesses, if a business departs from its legal obligations, the government mediator can refer the case to the agency's enforcement branch for disciplinary measures to be undertaken. In practice, this means that businesses participating in conciliation have a significant incentive to consistently comply with the minimum legal requirements, yielding satisfactory results for consumers.

D. Ombudspersons

23. Countries in Northern Europe pioneered the modern ombudsperson concept, intended to safeguard citizens with regard to services provided by Governments. Ombudsperson schemes in Latin America involve formal and informal investigation and adjudication by a case handler from an independent public authority, who investigates complaints and proposes or imposes a solution. One of the strengths of ombudspersons is that they are better informed and more aware of market conditions and consumer rights than most ordinary judges.[28] One successful example of such schemes is that of the financial ombudsman services of the United Kingdom of Great Britain and Northern Ireland.

E. Alternative dispute resolution

24. In line with the recommendation in the guidelines for consumer protection to provide access to remedies that do not impose costs, delays or undue burdens on the economic value at stake or on society and businesses (para. 37), policymakers have

[23] Organization for Economic Cooperation and Development, 2007.

[24] Ibid; European Commission, 2013, Communication on towards a European horizontal framework for collective redress, 11 June.

[25] C Hodges, 2015, Mass collective redress: Consumer alternative dispute resolution and regulatory techniques, *European Review of Private Law*, 23(5): 829–874.

[26] UNCTAD, 2012. Examples include Argentina, Colombia, Costa Rica, the Dominican Republic, Ecuador, Egypt, El Salvador, Guatemala, Honduras, Nicaragua, Oman, Panama, Paraguay, Peru, the Plurinational State of Bolivia, South Africa, Sri Lanka, Swaziland, the United Republic of Tanzania, Uruguay and Zambia.

[27] Contribution from the United States Federal Trade Commission to UNCTAD questionnaire.

[28] C Hodges, 2016, p. 364.

developed alternative dispute resolution, whereby an impartial third party, whether public or private, intervenes to solve a dispute between consumers and businesses. Alternative dispute resolution systems are, in most instances, designed to settle disputes, not to provide redress or compensation for consumers, which is a power usually reserved for judicial authorities.

25. As noted in one study, alternative dispute resolution systems increase access to justice and the application of the law whenever a person uses such a system to raise a consumer to business claim, "rather than do nothing about it because they do not have time or think that a court or a lawyer would just not be worth it".[29] Since consumers are generally discouraged from pursuing judicial procedures, which can be expensive, formal and slow in reaching decisions on small value claims, one study states that the word alternative in the context of consumer to business disputes is becoming progressively superfluous, as, in many instances, consumers simply do not contemplate the courts as a forum to obtain redress.[30]

26. The European Union directive of 21 May 2013 on alternative dispute resolution for consumer disputes contains mandatory requirements, implementation of which is monitored by public supervisory bodies. First, the alternative dispute resolution entity must possess the necessary expertise and be independent and impartial. Second, the process must be accessible, transparent, fair and effective. Third, consumers must have the liberty to consent to alternative dispute resolution. Finally, alternative dispute resolution procedures may not deprive consumers of their rights or produce situations where consumer rights are violated. Each of these elements involves detailed and concrete requirements for the alternative dispute resolution entity and the natural person in charge of alternative dispute resolution.

27. There are three traditional models of alternative dispute resolution, depending on the role of the impartial third party. In mediation, the alternative dispute resolution entity facilitates a space for parties to exchange information and guides them towards a solution. In conciliation, the entity is also responsible for proposing a solution. In arbitration, the entity has the power to impose a solution, which can only be appealed on strict conditions, usually on grounds of nullity.

28. Another key distinction between various alternative dispute resolution mechanisms is the level of voluntariness, that is, whether businesses are free to participate in the resolution and whether the resulting decision is binding upon the parties. Countries in Latin America have a long tradition of offering State-sponsored mediation services for consumers, which are voluntary for consumers but not for businesses, except in cases of online dispute resolution, which are always voluntary for businesses. National enforcement agencies chair mediation sessions and ensure that legal obligations are respected by traders. The results of mediation can be directly enforceable. Some countries in Europe have established public and private mediation and conciliation services that are voluntary for consumers and businesses; the resulting decisions are not binding upon the parties. In most instances, if the result of mediation and conciliation is binding, it can be the object of judicial appeal. Chile has developed collective mediation, led by its consumer protection agency.

29. Recourse to arbitration, once agreed by the parties, is no longer voluntary, which may jeopardize ultimate access to courts by consumers. In the United States, arbitration agreements prevail over judicial avenues for consumers to obtain redress, such as in the case of *AT&T Mobility v. Concepcion*, even when such agreements are part of general contract clauses, and thus in place before a dispute arises. The Code of Civil Procedure (2005) of Germany allows for pre-dispute arbitral agreements only if consumer consent is unequivocal, that is, if it is presented in writing in a separate document with the sole purpose of submitting a dispute for arbitration (section 1031 (3)). The Arbitration Act (1999) of Sweden states that pre-dispute arbitration clauses may not be invoked (section 6).

[29] Ibid, p. 360.
[30] Cortés, 2016, p. 2.

30. Another important element in the characterization of alternative dispute resolution is the source of funding. Countries in Latin America and some countries in Europe[31] have established a State-sponsored system covering all sectors, while the United States and some other countries in Europe[32] have favoured privately funded alternative dispute resolution mechanisms with a sectoral focus. To avoid the moral hazard of industry-funded alternative dispute resolution, most countries have put in place a system for the accreditation of entities, either directly monitored by the State or by a reputable private institution, such as the Better Business Bureau in North America.

31. To ensure the adequate monitoring of market practices, it is common to require alternative dispute resolution entities to publish annual activity reports, which are of special interest to government policymakers and enforcers in devising consumer policies or monitoring business practices. Privately administered alternative dispute resolution systems are usually subject to stricter scrutiny by public authorities, to ensure transparency, non-discriminatory practices, accountability and procedural fairness, in particular for consumers.

F. Online dispute resolution

32. Online dispute resolution consists of mechanisms for resolving disputes facilitated by the use of electronic communications and other information and communications technology,[33] and has been on the rise as a means to boost consumer trust in electronic commerce, particularly cross-border commerce. Such resolution can take different forms, depending on the degree of automatization.[34] The simplest mechanisms replicate face-to-face mediation by electronic means, using written forms or telephone or videoconferencing. Some software facilitates negotiations through standardized communications, which facilitate settlement. The most sophisticated and controversial mechanisms, such as those of Smartsettle, deliver predictive justice, in which the platform factors the positions and interests of the parties using algorithms and, based on precedent, proposes a solution without human interaction.

33. Online dispute resolution systems were first developed by online platforms, such as eBay and PayPal, that wished to increase the level of consumer satisfaction with their marketplaces. Such platforms manage more than 60 million disputes annually, compared with, for example, nearly 300,000 in the court system of the United States.[35] Other businesses providing online dispute resolution services have recently emerged, such as Modria, Resolver, Smartsettle, Virtual Courthouse and Youstice. There is growing concern over the need to supervise private online dispute resolution platforms, as consumers may more easily be misled regarding their procedural and substantive rights, and this has led to closer public oversight in recent years.

34. States have invested significant efforts in developing online dispute resolution mechanisms. Brazil, Colombia and Mexico, for example, have replicated State-sponsored mediation services in online contexts that provide for the accessible and speedy resolution of both online and offline disputes, based on voluntary participation by businesses. Following the issuance of the European Union regulation of 21 May 2013 on online dispute resolution for consumer disputes, the European Commission established a European Union-wide online portal for consumer disputes. The Association of Southeast Asian

[31] Belgium, Bulgaria, Denmark, Greece, Norway, Portugal, Spain and Sweden.

[32] France, Germany, Netherlands and United Kingdom.

[33] A/CN.9/WG.III/XXXII/CRP.3.

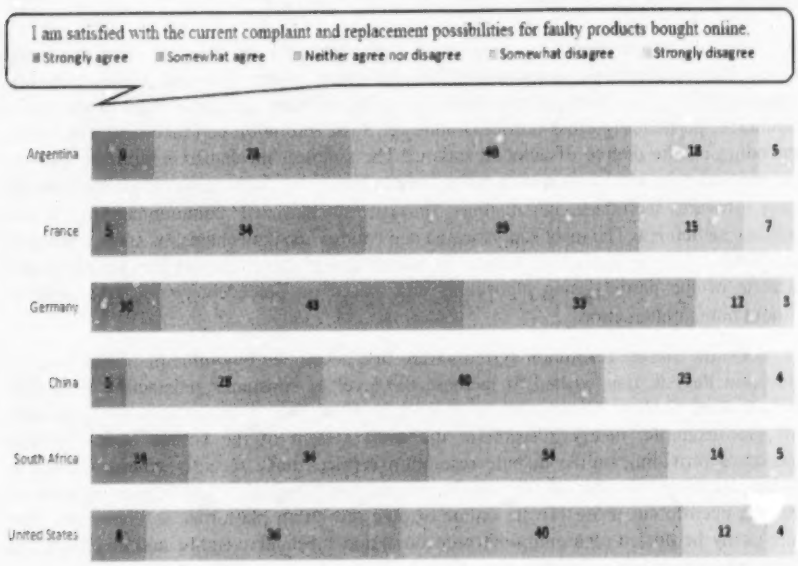
[34] Cortés, 2016.

[35] C Rule, 2012, Quantifying the economic benefits of effective redress: Large [electronic commerce] data sets and the cost-benefit case for investing in dispute resolution, *University of Arkansas at Little Rock Law Review*, 34(4): 767–777.

Nations (ASEAN) plans to set up a regional online dispute resolution platform before 2025.[36]

35. In 2006–2016, Working Group III on Online Dispute Resolution of the United Nations Commission on International Trade Law provided guidance on procedural rules in the establishment of online dispute resolution mechanisms for cross-border low-value business-to-business and business-to-consumer disputes arising from contracts concluded using electronic communications. Due to a lack of international consensus, notes prepared by the Commission did not address issues related to the accreditation of online dispute resolution platforms and neutral third parties, the enforcement of online dispute resolution decisions or the legal principles for dispute resolution. This situation is at odds with the need for legal certainty and predictability in dispute resolution for cross-border electronic commerce to flourish. According to Consumers International, 56 per cent of their member organizations state that online dispute resolution systems are not offered by digital providers in their country and that there is no legal obligation to do so.[37] The figure shows the results related to satisfaction with redress from a survey of online consumer satisfaction.

Consumers International survey of online consumers



Source: Institute for Consumer Policy, 2017, *Indicators of Consumer Protection and Empowerment in the Digital World*, Berlin.

G. Business customer care and complaint functions

36. Businesses must abide by consumer protection laws, which are enforced by government authorities by, inter alia, receiving and acting upon consumer complaints. If breaches of consumer protection law are not at stake, the guidelines for consumer protection recommend that Member States should encourage businesses to resolve consumer disputes in an informal manner and to establish voluntary mechanisms that can provide assistance to consumers (para. 38). They also recommend that Member States should cooperate with businesses and consumer groups to increase understanding of how to avoid disputes (para. 41), and recommend that businesses should make available

[36] ASEAN, 2016, The ASEAN strategic action plan for consumer protection 2016–2025: Meeting The challenges of a people-centred ASEAN beyond 2015.

[37] Consumers International, 2017, World Consumer Rights Day briefing: Redress – building a digital world consumers can trust, Campaign pack.

complaints-handling mechanisms that provide consumers with expeditious, fair, transparent, inexpensive, accessible, speedy and effective dispute resolution without unnecessary costs or burdens and that businesses should consider subscribing to domestic and international standards pertaining to internal complaints handling, alternative dispute resolution services and customer satisfaction codes (para. 11 (f)).

37. In highly competitive markets in which businesses need to maintain a good reputation, it is in their interest to invest in customer care services that may provide advisory services to customers. Standard 10002 on quality management – customer satisfaction of the International Organization for Standardization contains good practices recommendations on communications; the receipt, tracking, acknowledgement, initial assessment, investigation of and response to complaints; communication of a decision; and the closing of complaints.

38. Although of a different legal nature than dispute resolution and redress, charge-back and escrow mechanisms are highly effective in providing consumers with immediate relief. Charge-back is a mechanism whereby consumers are able to reverse credit card transactions if they experience undue harm from a business. Escrow is a payment option, used for example in China through Alipay, that holds back consumer deposits from businesses until consumers receive the goods or services without opposition.[38] Such systems are not dispute resolution mechanisms in themselves, yet provide consumers with a more favourable position when a dispute arises; should dispute resolution procedures ensue, the funds remain in the possession of consumers instead of businesses.

III. The international dimension

39. There are various ongoing initiatives at the international level to evaluate and measure dispute resolution and redress systems, which use different methodologies, yet always place consumer satisfaction at the forefront. For example, the UNCTAD research partnership platform on competition and consumer protection hosts an ongoing project on best practices for consumer redress aimed at analysing relevant and effective redress tools as best practice models and synthesizing an approach for a cross-border consumer redress platform.[39] The European Commission provides regular consumer market scoreboards, market monitoring, consumer and retailer surveys, market studies, behavioural research and consumer complaint statistics for evidence-based consumer policy. Based on the guidelines for consumer protection, one study proposes basic principles to ensure due process in consumer disputes, and the Institute for Consumer Policy has developed indicators for dispute resolution and redress.[40]

40. The liberalization of international trade has brought consumers to the forefront of cross-border operations. The growth of cross-border business–consumer trade, enabled by the digital revolution, has led to an increased need for satisfactory cross-border dispute resolution and redress mechanisms. However, countries have different frameworks for consumer dispute resolution and redress, which is far from optimal for promoting consumer trust in cross-border trade. Notes by the United Nations Commission on International Trade Law provide a good starting point for a solution in this regard. However, States need to find innovative ways to increase legal certainty and boost consumer confidence in international trade. The guidelines for consumer protection (paras. 37, 39 and 89) and the Organization for Economic Cooperation and Development *Recommendation on Consumer Dispute Resolution and Redress*, which stress the need to enhance the effectiveness of cross-border dispute resolution and international judicial and inter-agency cooperation in the recovery of foreign assets and the enforcement of decisions in cross-border cases, can also be useful in

[38] Y Yu and M Shen, 2015, Consumer protection as the open sesame that allows Alibaba to crush the forty thieves, *Journal of Antitrust Enforcement*, 3(1): 228–241.

[39] See http://unctad.org/en/Pages/DITC/CompetitionLaw/ResearchPartnership/Consumer-Redress.aspx.

[40] Y Yu and DJ Galligan, 2016, Due process of consumer protection: A study of the united nations guidelines [for] consumer protection, available at https://www.law.ox.ac.uk/sites/files/oxlaw/oxford_ungcp_due_process_w_fljs_logo.pdf; Institute for Consumer Policy, 2017.

this regard. The econsumer portal, an initiative of the International Consumer Protection and Enforcement Network for cross-border fraud complaints and assistance, provides guidance on the use of alternative and online dispute resolution for cross-border disputes and can provide valuable intelligence for evidence-based policymaking in this area. Similarly, the European Consumer Centres Network provides information, advice and assistance directly to consumers for intra-European Union consumer disputes, which can also inform policy decisions. Similarly, Argentina, Brazil and the European Union have introduced rules of private international law to specify the applicable laws and jurisdictions in consumer disputes. The General Assembly, in resolution 70/186, recognizes that such issues may be addressed most effectively through international coordination and partnership.

41. It is desirable to minimize legal barriers for applicants from other countries having recourse to domestic consumer dispute resolution and redress mechanisms. [41] Providing effective consumer dispute resolution and redress is a shared responsibility of Governments, businesses and consumer groups. It is probably one of the most critical investments to make in order to empower consumers in national and international marketplaces and thereby contribute to the achievement of the 2030 Agenda for Sustainable Development and the Sustainable Development Goals.

IV. Policy options

42. There is a trend to favour alternative dispute resolution for consumer disputes rather than judicial mechanisms. Yet, however slow and resource intensive, judicial redress is the avenue that offers the greatest respect for the rule of law and due process and that is capable of imposing damages for undue consumer harm. It is also the favoured mechanism to provide collective redress for consumers. In addition, judicial redress allows for enforcement, as courts have powers to impose sanctions on non-compliant businesses. As noted in one study, alternative dispute resolution is not designed to enforce consumer rights but simply to settle disputes.[42] Increasing the effectiveness and accessibility of courts is necessary to enhance consumer welfare in the marketplace and ensure better market surveillance.

43. In the light of the guidelines for consumer protection, the *Manual on Consumer Protection* and inputs received from member States, quality criteria against which consumer dispute resolution and redress may be evaluated and regulated may be delineated, as follows:

(a) Accessibility: Dispute resolution and redress should be of easy access and inexpensive, or even free, for consumers, in accordance with the economic value of the claim in question, and should waive the requirement for legal representation and allow consumer groups to represent consumer interests;

(b) Awareness: Governments, businesses and consumer groups should strive to increase consumer awareness of dispute resolution and redress through education and information programmes;

(c) Expertise, independence and impartiality of neutral third parties: Dispute resolution and redress entities, whether public or private, should be experts, should be independent and should be held to a high standard of ethical conduct;

(d) Transparency: Procedures should be transparent, including rules of procedure and reasoned decisions, in order that parties, policymakers, enforcers and other interested stakeholders can assess the fundamental fairness of dispute resolution and redress;

(e) Effectiveness, expeditiousness and enforceability: These criteria should include online accessibility, prompt notification to the parties by the dispute resolution and

[41] Organization for Economic Cooperation and Development, 2007.

[42] Cortés, 2016, p. 3.

redress entity, outcome within a short period, such as 90 days, and bestowal with direct enforceability;

(f) Fairness: There should be a reasonable possibility for parties to express their views, an opportunity to withdraw and due process;

(g) Voluntariness: Solutions should only be binding if the parties are so informed in advance and if they consent in full knowledge of the facts and, in some instances, redress systems should be compulsory for businesses, at least in some areas, such as key utility services and banking services, which may prove beneficial for enhancing access to dispute resolution and redress;

(h) Legality: The law should be strictly respected in cases of imposed solutions, there should be rules on the conflict of law and jurisdiction, referral to judicial bodies for clarification of points of law should be allowed and there should be an obligation to respect consumer rights at all times;

(i) Coverage: Dispute resolution and redress systems should be able to cover all sectors in a systematic way, to increase awareness, certainty and understanding;

(j) Special consideration for the needs of vulnerable and disadvantaged consumers: Such criteria should include special education and information programmes and tailored advisory services;[43]

(k) Accountability: Regulators and enforcers should have access to aggregated data on dispute resolution and redress, especially from alternative dispute resolution mechanisms, to ensure evidence-based policymaking and adequate market surveillance.

V. Questions for discussion

44. The third session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy may wish to consider the following questions for discussion:

(a) How can judicial redress procedures be rendered more suitable for consumer disputes?

(b) What are the key characteristics of effective out-of-court and/or alternative dispute resolution?

(c) What avenues are there for participation by businesses in dispute resolution and redress?

(d) How might UNCTAD contribute to consumer dispute resolution and redress?

[43] See, for example, the Common Ground project of the United States on enhancing the consumer protection expertise of legal practitioners that helps low-income individuals (https://www.consumer.ftc.gov/blog/2015/07/id-thank).

United Nations TD/B/C.I/CPLP/12

United Nations Conference on Trade and Development

Distr.: General
30 April 2018

Original: English

Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Consumer Protection Law and Policy
Third session
Geneva, 9 and 10 July 2018
Item 3 (f) of the provisional agenda

Consumer product safety

Note by the UNCTAD secretariat

Executive summary

This note discusses some of the global consumer product safety issues, such as cross-border challenges stemming from the rise of the digital economy and the dumping of hazardous products in developing countries. It also provides information about existing initiatives at the regional and global levels to address consumer product safety and proposes issues for discussion by member States wishing to further explore this topic under the United Nations guidelines for consumer protection.

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Introduction

1. Since President John F. Kennedy delivered the Special message to the Congress on protecting the consumer interest in March 1962,[1] consumer product safety has gained international recognition as a prominent issue of consumer protection policy.[2]

2. The United Nations guidelines for consumer protection provide extensive guidance to assist countries in achieving and maintaining adequate protection of their population as consumers, bearing in mind that consumers should have the right of access to non-hazardous products. The liberalization of trade, coupled with the rapid expansion of the digital economy, has brought consumer product safety to the forefront of international cooperation efforts.

3. The Intergovernmental Group of Experts on Consumer Protection Law and Policy at its second session requested the UNCTAD secretariat "to prepare reports and studies, taking into account the input from member States and other relevant stakeholders, for the third session of the Intergovernmental Group of Experts" on, among other topics, consumer product safety.[3] The present note has benefited from contributions from member States.[4] It considers the current international framework for consumer protection safety under the guidelines, as well as some emerging issues on cross-border consumer product safety. Further, the note presents existing regional and global initiatives on international cooperation and proposes some questions for discussion at the third session of the Intergovernmental Group of Experts.

I. United Nations guidelines for consumer protection

4. The United Nations General Assembly reaffirmed the guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement institutions and redress systems, and for assisting interested Member States in formulating and enforcing domestic and regional laws, rules and regulations that are compatible with their own economic, social and environmental circumstances, as well as promoting international enforcement cooperation among Member States and encouraging the sharing of experiences in consumer protection. As set out in the guidelines, one of the legitimate needs that they are intended to meet is the protection of consumers from hazards to their health and safety.[5]

5. Box 1 reproduces section V.B on physical safety and section V.D on standards for the safety and quality of consumer goods and services, as set out in A/RES/70/186 (annex, paragraphs 16–19 and 33–35, respectively). This is currently the only internationally agreed legal instrument that addresses consumer protection and product safety. Despite their non-binding nature, the guidelines have been widely implemented by Member States.[6]

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[1] JF Kennedy, 1962, Special message to the Congress on protecting the consumer interest, 15 March.

[2] The Council of Europe Consumer Protection Charter, appended to resolution 543 (1973), also addressed "protection against physical damage due to unsafe products", establishing that "national legislation shall include general requirements for the safety of food, other products and services" and that "minimum standards shall be set and enforced, in order to eliminate or reduce, as far as possible, any risk of danger in the content of goods and the containers thereof, their handling and use". For effective protection against hazards to consumer health and safety, "goods and services offered to consumers must be such that, under normal or foreseeable conditions of use, they present no risk to the health or safety of consumers. There should be quick and simple procedures for withdrawing them from the market in the event of their presenting such risks. In general, consumers should be informed in an appropriate manner of any risk liable to result from a foreseeable use of goods and services..." (European Communities, 1975, Preliminary programme of the European Economic Community for a consumer protection and information policy, *Official Journal of the European Communities*, Vol. 18. C 92).

[3] TD/B/C.I/CPLP/9.

[4] Ibid.

[5] A/RES/70/186.

[6] TD/B/C.I/CPLP/23, para. 19, available at

6. Further, section V.K on measures relating to specific areas (paragraph 69) refers to safety as "product quality control" in relation to food, water and pharmaceuticals. The section also refers to standards from relevant international bodies, including the World Health Organization Codex Alimentarius, which are mentioned later in this note.

Box 1
United Nations guidelines for consumer protection

B. Physical safety

16. Member States should adopt or encourage the adoption of appropriate measures, including legal systems, safety regulations, national or international standards, voluntary standards and the maintenance of safety records to ensure that products are safe for either intended or normally foreseeable use.

17. Appropriate policies should ensure that goods produced by manufacturers are safe for either intended or normally foreseeable use. Those responsible for bringing goods to the market, in particular suppliers, exporters, importers, retailers and the like (hereinafter referred to as "distributors"), should ensure that while in their care these goods are not rendered unsafe through improper handling or storage and that while in their care they do not become hazardous through improper handling or storage. Consumers should be instructed in the proper use of goods and should be informed of the risks involved in intended or normally foreseeable use. Vital safety information should be conveyed to consumers by internationally understandable symbols wherever possible.

18. Appropriate policies should ensure that if manufacturers or distributors become aware of unforeseen hazards after products are placed on the market, they should notify the relevant authorities and, as appropriate, the public without delay. Member States should also consider ways of ensuring that consumers are properly informed of such hazards.

19. Member States should, where appropriate, adopt policies under which, if a product is found to be seriously defective and/or to constitute a substantial and severe hazard even when properly used, manufacturers and/or distributors should recall it and replace or modify it, or substitute another product for it. If it is not possible to do this within a reasonable period of time, the consumer should be adequately compensated.

D. Standards for the safety and quality of consumer goods and services

33. Member States should, as appropriate, formulate or promote the elaboration and implementation of standards, voluntary and other, at the national and international levels for the safety and quality of goods and services and give them appropriate publicity. National standards and regulations for product safety and quality should be reviewed from time to time in order to ensure that they conform, where possible, to generally accepted international standards.

34. Where a standard lower than the generally accepted international standard is being applied because of local economic conditions, every effort should be made to raise that standard as soon as possible.

35. Member States should encourage and ensure the availability of facilities to test and certify the safety, quality and performance of essential consumer goods and services.

Source: A/RES/70/186.

http://unctad.org/meetings/en/SessionalDocuments/ciclpd23_en.pdf (accessed 5 March 2018).

II. Defining a scope

7. Building on the guidelines, the UNCTAD *Manual on Consumer Protection*[7] aims to support developing countries and economies in transition in their choice of policies and to provide practical tools for policymakers in their efforts to enhance capacities while implementing consumer protection nationally and regionally. The Manual contains a chapter on product safety and liability. As stated therein, the main rationale underlying legislative and institutional frameworks on consumer product safety is that consumers need to be protected against unreasonable, unnecessary and preventable risks of injury from the foreseeable use of consumer products.

8. Therefore, comprehensive consumer protection statutes should extend to all consumer products, especially those that might become unsafe with age or use – be it normal or abusive. At the same time, attention should be paid to the upstream stages of the production process where intervention may be more effective in terms of scale, eliminating the need for large numbers of individual redress procedures.

9. The Manual details six basic components to establish a coherent and effective product safety system (policy), which are as follows: pre-market design, preparatory action, regulatory action and standards setting, monitoring action, corrective action and compensatory action. These components underline four important aspects of consumer product safety systems: the general safety requirement for businesses, market surveillance and law enforcement against infringers by public authorities, standards setting (mandatory or voluntary) and product liability to deal with defective products through recalls and bans, for example.

10. Ensuring the safety of food products is an essential component of consumer protection policies. As stated in A/RES/70/186, section V.K on food, paragraph 70, "when formulating national policies and plans with regard to food, Member States should take into account the need of all consumers for food security and should support and, as far as possible, adopt standards from the Food and Agriculture Organization of the United Nations[8] and the World Health Organization[9] Codex Alimentarius[10] or, in their absence, other generally accepted international food standards. Member States should maintain, develop or improve food safety measures, including, inter alia, safety criteria, food standards and dietary requirements, and effective monitoring, inspection and evaluation mechanisms".

11. Considering the specific nature of food product safety and the wide coverage it has received, this note focuses on non-food products and proposes the following definition of consumer products:

> Consumer products: Goods used by consumers on a daily or frequent basis, but excluding food, beverages, pharmaceutical and health care products, firearms, and equipment installed as permanent fixtures at locations other than private residences. Included in the scope, but not limited to these items, would be goods such as apparel, toys, vehicles, personal and home electronics, and home appliances.[11]

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[7] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication, New York and Geneva).

[8] Food safety is a complex endeavour, not just because of the inherent risks associated with food production, but also because of the diverse nature of international food supply chains. See http://www.fao.org/food/food-safety-quality/about-us/pt/ (accessed 23 April 2018) and Institute of Medicine, 2009, The complexities of food safety and some strategic approaches being taken, in Institute of Medicine, 2009, *Managing Food Safety Practices from Farm to Table: Workshop Summary* (The National Academies Press, Washington, D.C.).

[9] See http://www.who.int/foodsafety/areas_work/food-standard/en/ (accessed 23 April 2018).

[10] The Codex Alimentarius aims to create harmonized international food standards to protect the health of consumers and ensure fair trade practices. See http://www.fao.org/fao-who-codexalimentarius/en/ (accessed 23 April 2018).

[11] Consumer Product Safety Commission, 2017, contribution provided by the United States for the purposes of the of this note.

12. This excludes pharmaceuticals and health-care products, as they are subject to specific rules and regulations and often supervised by sector-specific government authorities other than consumer protection agencies. However, product safety is a vast complex area that requires focusing on key categories of products and further research, as well as engaging with a broad range of stakeholders, to develop future work on this topic at the international level.[12]

13. The Intergovernmental Group of Experts may, therefore, wish to focus on non-food non-pharmaceutical consumer products and their safety.

III. Cross-border challenges and consumer safety product concerns for developing countries

14. The existence of different national standards can lead to a consumer product safety issue when products manufactured in a country are exported to markets where they do not meet mandatory or voluntary safety standards. Overseas retailers are often unaware of the relevant safety regulations applicable in export markets and do not necessarily pay due regard to the country where the consumer is located. They also overlook the challenges of domestic authorities in dealing with cross-border consumer safety issues. Consumer product safety concerns in a globalized and digitalized world exert pressure on existing national frameworks to find common ways to address key issues.

15. The safety of motor vehicles, a high value added product, is a priority worldwide, illustrating that product safety is indeed a global issue. Technical and legal motor vehicle safety requirements are mandatory due to the high level of risks entailed for pedestrians, drivers and passengers – particularly children.

16. Cross-border supply chains such as car manufacturers where production boasts an international array of auto parts are a classical example of a global product safety issue. Global supply chains can create or exacerbate safety risks and vulnerabilities, particularly when inconsistencies in product safety standard vary across jurisdictions.[13]

17. Headlines relating to global product safety issues in the car industry are common in today's world. For example, in February 2010, Toyota had to undertake a global recall of cars due to sticking accelerator pedals. This affected the carmaker's global supply chain, suspending sales in different regions of the world and shutting down manufacturing plans.[14] Most car manufacturers had been involved in product safety investigations, some of which have dealt with consumer fatalities, such as those associated with the Nissan Tsuru in Mexico.[15]

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[12] TD/B/C.I/CPLP/9.

[13] See https://www.consumerreports.org/cro/news/2016/05/everything-you-need-to-know-about-the-takata-air-bag-recall/index.htm (accessed 12 March 2018); for a detailed analysis of the automotive industry, see A Marucheck, N Greis, C Mena and L Cai, 2011, Product safety and security in the global supply chain: Issues, challenges and research opportunities, *Journal of Operations Management*, 29(7):707–720.

[14] Institute for Public Relations, 2011, The Toyota recall crisis: Media impact on Toyota's corporate brand reputation, Case background note, available at https://instituteforpr.org/wp-content/uploads/JFGRA-InfoTrend-case-study-ver-2.pdf (accessed 24 April 2018).

[15] The Nissan Tsuru was responsible for over 4,000 deaths in Mexico between 2007 and 2012 and received a zero-star safety review in tests conducted by the Global New Car Assessment Programme and the New Car Assessment Programme for Latin America and the Caribbean. After a strong campaign by the latter programme and consumer organizations, Nissan agreed to stop production of the Tsuru by May 2017. See Consumers International, 2018, Protecting consumers in a globalized world: Time for a global approach to product safety? https://www.consumersinternational.org/news-resources/blog/posts/a-global-approach-to-product-safety/ (accessed 23 April 2018).

18. The recent rise of the digital economy, particularly business-to-consumer e-commerce, has also brought safety challenges that may be potentially harmful to consumers. The Working Party on Consumer Product Safety of the Organization for Economic Cooperation and Development (OECD) has divided these challenges into three categories: banned and recalled products, inadequate product labelling and safety warnings, and products that do not meet voluntary or mandatory safety standards.[16]

19. The online purchase of banned products represents a cross-border problem that Governments are struggling to address. Virtual platforms, which are increasingly used to sell products prior to their sale at offline stores, may contribute to harming consumers across jurisdictions. In certain instances, this means the sale of unsafe products. Some consumer organizations, for example, argue that reward-based crowdfunding platforms may allow unsafe goods to enter the market in the absence of proper supervision by relevant authorities.[17]

20. Global product recalls are a cross-border challenge for many jurisdictions. In the online marketplace, product manufacturers face additional challenges in tracking the sale of recalled products, which are often available through multiple channels across countries. This has been the case in several instances[18] where recalled products are still offered online as second-hand goods.[19]

21. OECD found that consumers engaged in business-to-consumer transactions do not always have access to product labelling and safety warning information before online purchasing, affecting safety and consumer trust.[20] While domestic laws or industry-self regulations address these issues through mandatory disclosures or warning labels, they may not be applicable in an e-commerce context, or may be insufficient (foreign language labelling).[21]

22. An OECD survey found that non-compliance by businesses with safety standards at the cross-border level (88 per cent) is much higher than at the domestic level (44 per cent).[22] Another example is cross-border toy safety. Children's toys are available both online and offline, often raising product safety issues: The low barriers to entry into the sector mean that untested or dangerous products are frequently available in the marketplace.

23. Toy safety is another sector where cooperation is crucial, with manufacturers and between member State authorities, as illustrated by the guidelines for strengthening European Union–China toy safety (2006) and by the cooperation between the European Union and the United States.[23]

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[16] OECD, 2016, Online product safety: Trends and challenges, OECD Digital Economy Papers No. 261.

[17] Ibid.

[18] In 2013, the Australian Competition and Consumer Commission became aware of an offshore business that was supplying banned sky lanterns at an online marketplace. The Commission and the online marketplace worked together to remove the banned items from sale to Australian consumers. See Australian Competition and Consumer Commission, 2014, Consumer product safety online, 2014, available at https://www.accc.gov.au/system/files/Consumer%20product%20safety%20online.pdf (accessed 24 April 2018).

[19] In 2014, the United States Consumer Product and Safety Commission and a consumer electronic supplier detected that 10 different consumer products were still on offer online even though they had been recalled in 2012 and 2013. These included cameras, televisions, dishwashers, electric ranges and office chairs that could cause hazards such as fire, burn, expelled parts or skin irritation. See OECD, 2016.

[20] Australian Competition and Consumer Commission, 2014, Future activities: Online sales, presentation made at International Product Safety Week 2014, Brussels, 19 June.

[21] OECD, 2016.

[22] Ibid.

[23] Voluntary agreements were signed between European business associations and the European Commission to improve toy safety, and there is cooperation between the European Union and the United States on the issue (see https://ec.europa.eu/growth/sectors/toys/safety_en, accessed 24 April 2018).

24. In many instances, consumers tend to buy products in devious markets, a common situation in developing countries due to factors such as lack of information and limited purchasing power. For instance, toys are low value added products that consumers often simply dispose of, unaware of recalls or of the consequences of such waste in the environment. The dumping of non-necessarily safe products in these countries is commonly found in many jurisdictions.[24]

25. Consumers are not aware that these products represent a danger to their safety, as they might not show any evident hazardous features.[25] Hence, the need for policy coordination on how to deal with hazardous products internationally, particularly taking into consideration realities in developing countries.

26. Previous UNCTAD work with countries of the Association of Southeast Asian Nations (ASEAN)[26] in 2016 found the following:

(a) Except for Singapore, minimum safety standards set by consumer protection general laws for a wide range of household consumer products and services do not exist, other than for food, subject to specific law;

(b) Except for Malaysia, general consumer laws do not provide for a general product safety requirement requiring all consumer goods to be reasonably safe;

(c) There are few product liability laws providing redress to consumers who have suffered harm from unsafe goods, despite collective redress mechanisms introduced in five ASEAN countries, including United States-style class-action regimes in Indonesia and Thailand;

(d) There is limited data collection and sharing on recalls of consumer goods (except in Viet Nam, since 2014);

(e) There is insufficient inter-agency cooperation and coordination on safety-related measures, nationally and across borders.[27]

27. Other developing countries may face similar challenges, including in the enforcement of existing product safety regulations.

IV. Consumer product safety frameworks

A. General safety requirements

28. One of the most effective means of ensuring safer consumer products is to implement mandatory general safety requirements for national and imported goods. In line with A/RES/70/186, section V, paragraph 17, a general product safety requirement provides for the responsibility of producers to supply a safe product, usually one that is "reasonably" safe.

[24] See for example, http://allafrica.com/stories/201306031116.html (accessed 24 April 2018).

[25] See O Osibanjo and IC Nnorom, 2007, The challenge of electronic waste (e-waste) management in developing countries, *Waste Management and Research*; IC Nnorom and O Osibanjo, 2008, Overview of electronic waste (e-waste) management practices and legislations, and their poor applications in the developing countries, *Resources, Conservation and Recycling*, 52(6):843–858.

[26] Except Singapore, all ASEAN member States are developing countries.

[27] UNCTAD and ASEAN, 2015, Product safety and labelling: Project on strengthening technical competency for consumer protection in ASEAN, available at http://aadcp2.org/wp-content/uploads/Product-Safety-Labelling-Module-Final-21Dec15.pdf (accessed 24 April 2018).

29. This does not mean that the producer is expected to supply a product that is free from all risk – the expectation is that the product is either free of any risk or minimum risk.[28] For example, the Malaysian Consumer Protection Act (1999) prescribes a general safety requirement that covers the following obligations to businesses: the manner in which and purposes for which a product is being marketed; the get-up of the product; the use of any mark in relation to the product; and the instructions or warnings in respect of the keeping, use or composition of the product.[29]

B. Standards

30. When the law does not provide for setting general product safety requirements,[30] the minimum standards for the consumer safety of specific goods must be established by consumer protection agencies and/or product safety authorities, depending on the jurisdiction. Such safety standards may relate to the composition, presentation, labelling and instructions for use. They could also relate to the testing of goods during or after manufacture or processing.

31. Through mandatory safety standards and even voluntary ones, manufacturers and retailers are provided with essential information on what is required for a product to be safe. The International Organization for Standardization (ISO) has been developing standards on the safety of consumer products. A large proportion of all national standards implemented around the world are derived from ISO documents. The Organization relies on the expertise of industry representatives to develop an industry standard. The first step is for an industry to communicate the need to develop a standard to the established national ISO member institution. Some of these ISO members can be government bodies or private institutions, depending on the jurisdiction.[31]

32. Industry standards are the cornerstone of consumer product safety standards. As businesses deepen their experiences in the manufacture of consumer products, their knowledge of the possible risks and hazards also increases. Thus, consumer protection agencies and product safety authorities encourage businesses to develop voluntary standards and to comply voluntarily with product safety standards to help protect consumers from unreasonable risks of injury. For instance, the United States Consumer Product Safety Commission participates in many voluntary standards committees and assists firms in determining whether a product follows applicable voluntary safety standards. This practice has been useful to the Commission's staff in its preliminary determination of whether a certain product presents a substantial product hazard under section 15 of the United States Consumer Protection Safety Act (1972).[32]

33. In jurisdictions where corporate social responsibility is noticeable, voluntary standards addressing every type of product on the market are common[33] and are considered industry best practices or industry consensus standards.[34]

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[28] According to directive 2001/95/EC of the European Parliament and the Council of 3 December 2001 on product safety, "safe product" shall mean any product which, under normal or reasonably foreseeable conditions of use, including duration and, where applicable, putting into service, installation and maintenance requirements, does not present any risk or only the minimum risks compatible with the product's use, considered to be acceptable and consistent with a high level of protection for the safety and health of persons....".

[29] See https://mystandard.kpdnkk.gov.my/mystandard_portal2014/document/akta_perlindunganpengguna1999.pdf (accessed 24 April 2018).

[30] See directive 2001/95/EC of the European Parliament and the Council of 3 December 2001 on product safety, article 2.

[31] ISO, 2017, How we develop standards, available at https://www.iso.org/developing-standards.html (accessed 24 April 2018).

[32] Cornell Law School Legal Information Institute, 2006, 16 CFR 1115.8: Compliance with product safety standards, available at https://www.law.cornell.edu/cfr/text/16/1115.8 (accessed 24 April 2018).

[33] Voluntary standards exist for hundreds of consumer products, ranging from go-karts to cribs. Industry relies on these standards when designing their products and in litigation, often pointing to their

34. Industries are learning the value of consumer trust.[35] Hence, industry self-regulation initiatives are crucial to safeguard consumer protection legitimate interests and complement consumer laws and regulations: They should be coherent with government policies so that they may enhance consumer protection. OECD has examined the contribution of industry self-regulation to consumer protection and provided insights about the factors that shape the success of these initiatives: the strength of the commitments made by participants, the industry coverage of the industry self-regulation, the extent to which participants adhere to the commitments and the consequences of not adhering.[36]

C. Liability laws

35. Consumer product safety legislation is directly related to businesses' liability for the products that are placed on the market.[37] Considering the supply chain, manufacturers, distributors and retailers are all liable for products placed and sold on the market. Within domestic boundaries, laws have traditionally entitled consumers to compensation and/or other relief measures if physically harmed or if they suffer other losses from unsafe goods. Ideally, the possibility of consumers bringing such claims to court or of using other dispute resolution mechanisms is also an incentive for suppliers to provide safer products. This is, however, conditioned by consumers' awareness of their rights regarding product safety, available information about the existing protection of their economic interests and their ability to pursue these claims. Both contract law and tort law are relevant in these cases. Contract law[38] applies to consumers' agreements that have a direct link with a supplier – typically, the retailer – as consumers will usually reach out to the product's seller, the closest provider in a supply chain.

D. Corrective measures: Recalls

36. Some countries such as Australia and Brazil provide specific recall policies[39] as corrective measures for businesses to withdraw unsafe products from the market, also informing consumers. Businesses are then bound to recall a product once the minimum risk of harm is detected.[40]

37. Australia has its own product safety system, involving consumers, suppliers and government agencies in the process. The powers are divided among agencies according to their expertise covering different categories of products (including foods, drugs and

compliance in defending product designs. While standards have the potential to mitigate product hazards, they are minimum requirements. As such, certain product hazards may not be addressed. See C Pollack-Nelson and S Waters Deppa, 2009, The role and limitations of voluntary standards in consumer product safety, *Proceedings of the Human Factors and Ergonomics Society Annual Meeting* 53(9):563–567.

[34] Promotional Products Association International, 2017, Product responsibility best practices: Voluntary standards, available at http://www.ppai.org/media/1784/pr_bp_mandatoryvsvoluntarystandards.pdf (accessed 24 March 2018).

[35] SAI Global, n d., The consumer trust index: What your organization needs to know about trust, available at https://m.comms.saiglobal.com/res/saiglob_mkt_prod1/35e4a9a13298fa9d606d7627afbff6ab.pdf (accessed 24 April 2018).

[36] See OECD, 2015, Industry self-regulation: Role and use in supporting consumer interests, 2015, DSTI/CP(2014)4/FINAL.

[37] Modern product liability law rests on six basic assumptions, some of which relate to consumer preferences and others to sources of market failure. See A Schwartz, 1992, The case against strict liability, *Fordham Law Review*, 60(5):819–842.

[38] Standard form contracts and privity of contracts would be the most common means to address this problem through contract laws. See UNCTAD, 2017.

[39] If a product or service presents a safety risk or does not comply with a mandatory standard or ban, it may need to be recalled. These products must be withdrawn from the market by the business concerned, under the surveillance of public authorities.

[40] See http://portal.mj.gov.br/recall/ (accessed 24 April 2018).

chemicals).[41] Products outside any of the above-mentioned categories are classified as general consumer products and are monitored by the Australian Competition and Consumer Commission. The Commission monitors measures related to product safety such as voluntary actions by suppliers, government laws that give incentives for producing safe products, restrictions on selling unsafe products, and information and education that enable consumers to choose safe products and use them safely. The Australian system counts on the engagement of businesses, consumers and regulators to identify and manage the risk of any unsafe products. The cooperation of consumers and suppliers is essential in helping identify hazardous products that may need regulation.[42]

38. The recall system of Brazil is provided in the Brazilian Consumer Protection Legislation recorded in the Consumer Protection Code of 1990.[43] The Brazilian recall system has both offline and online procedures, which are monitored and performed by consumer protection authorities, the metrology authority, the health authority, as well as other regulatory authorities (such as transport), businesses, consumers and the judiciary. The consumer protection authorities also conduct investigations, which may lead to a compulsory recall by businesses. With one of the strictest recall legislations in the world,[44] Brazil is also internationally engaged in consumer health and safety, taking part in investigations, campaigns and other cooperation initiatives within the Southern Common Market[45] and the Organization of American States.

39. The European Union has comprehensive and detailed legislation related to consumer product safety.[46] In the European Union system, member States are responsible for enforcing product safety laws and conducting market surveillance.[47] General requirements for the safety of products are set out also in sector-specific legislation. Voluntary standards are also drawn up by the European standardization organizations, and the references to European product standards are published in the *Official Journal* of the European Union. The European Commission, on a per-case basis, can adopt a formal decision requiring member States to ban products that pose a serious risk, or recall or withdraw products from the market.[48] Likewise, member States need to inform the European Commission and other member States about the products they find in their markets that pose a risk to the health and safety of consumers, and which are available in other European Union markets. This reporting is done through the rapid alert system for non-food dangerous products, also known by its acronym RAPEX.[49]

E. Consumer awareness and education

40. Consumer information and education is highlighted in the general principles of the guidelines, section III, paragraph 5 (e) and (f), as one of the legitimate needs which the guidelines are intended to meet, together with the protection from hazards to consumers' health and safety and with developing consumer protection culture, namely the recall culture in Member States. Since consumer information and awareness raising are instrumental for effective consumer protection, this is also why many product safety laws establish the need to inform consumers on this topic to sensitize them to product safety

[41] See https://www.productsafety.gov.au/about-us/who-regulates-what (accessed 24 April 2018).

[42] See https://www.productsafety.gov.au/product-safety-laws/safety-standards-bans/mandatory-standards (accessed 24 April 2018).

[43] http://www.planalto.gov.br/ccivil_03/Leis/L8078.htm (accessed 24 April 2018).

[44] Despite the country's engagement in the field, its recalls mostly include high-benefit products such as vehicules and machines, not many toys recalls.

[45] See http://www.bakermckenzie.com/en/insight/publications/2017/11/recalls-specific-new-regulation (accessed 24 April 2018).

[46] See http://ec.europa.eu/consumers/eu_consumer_policy/our-strategy/index_en.htm (accessed 24 April 2018).

[47] See http://ec.europa.eu/consumers/consumers_safety/index_en.htm (accessed 24 April 2018).

[48] See https://ec.europa.eu/info/departments/justice-and-consumers_en (accessed 24 April 2018).

[49] See http://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/index_en.htm (accessed 24 April 2018).

awareness and alerts,[50] regardless of whether they are the direct or first purchasers of the product that is being recalled. The need to inform all possible victims of hazardous products or services (depending on the legislation) also applies to possible bystanders, as any person can be a victim of a hazardous product.[51]

F. A case study in the toy industry

41. See box 2 below regarding the Argentinean experience that includes cooperation with United States authorities in the toy market.

Box 2
Argentina

In Argentina, Law No. 24240 of Consumer Protection and its Regulatory Decree No. 1798/94 govern consumer product safety.

In March 2017, Kids II Far East Limited presented a voluntary recall of Oball Rattles supplied by Topco Marketing Ltd. before the National Directorate for Consumer Protection of Argentina.

Since January 2016, approximately 504 affected Oball Rattles have been sold in Argentina. The rattles were manufactured before 21 October 2016. Kids II received complaints because the transparent plastic rattle chamber of the toy did not remain closed. When this occurred, there was a risk that the small parts could be released, posing a risk of suffocation for children under three years of age.

The firm published advertisements informing consumers about the recall programme of the product and instructing them to immediately stop using the product and contact the company to obtain a refund (by phone or courier, cost of the product and so forth).

As an example of the importance of international cooperation, the same recall was registered with the United States Consumer Product Safety Commission as follows:[52]

- Name of product: Oball Rattle
- Hazard: The clear plastic disc on the outside of the Oball Rattles can break, releasing small beads and posing a choking hazard to young children.
- Remedy: Refund
- Recall date: 2 March 2017
- Units: about 680,000 (in addition, about 17,000 were sold in Canada)

42. Apart from enforcement actions, there are several measures that businesses and regulators alike can take. As illustrated in the aforementioned case study, international cooperation and the exchange of information play a major role in preventing and ceasing the distribution of hazardous products on the market worldwide. The guidelines detail key measures that Member States and businesses must follow to protect the safety of consumers.

V. International cooperation

43. In recent years, efforts across regions and at the bilateral, regional and multilateral levels have been a priority for product safety regulators. There are regional initiatives in the context of regional organizations' frameworks such as the European rapid alert system for

[50] See https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=SafeProductsOnline&lng=en; https://www.consumerprotection.govt.nz/tradingstandards/product-safety/keeping-kids-safe/; and http://www.justica.gov.br/news/senacon-lanca-site-de-recall-no-27o-aniversario-do-cdc.2 (accessed 24 April 2018).

[51] See http://www.hfw.com/downloads/HFW-Aerospace-Bulletin-0713.pdf (accessed 25 April 2018).

[52] https://www.cpsc.gov/Recalls/2017/kids-ii-recalls-oball-rattles# (accessed 25 April 2018).

non-food products;[53] the ASEAN recalls portal;[54] the consumer health and safety network of the Organization of American States;[55] and the cooperative engagement framework established between the United States Consumer Product Safety Commission, Health Canada and the Consumer Protection Federal Agency of Mexico.

44. Across continents, the Asia–Pacific economic cooperation product safety incident information sharing system and the rapid alert system for non-food products–China system, which enables the transmission of data on unsafe products between the European Commission and Chinese authorities,[56] are also important mechanisms. These schemes provide a framework for cooperation, promoting an exchange of information on unsafe products and experiences of verification.

45. At the global level, OECD has been active through the Working Party on Consumer Product Safety and the global efforts made such as the global recall portal.[57]

VI. Issues for discussion and a possible role for UNCTAD

46. The forthcoming session of the Intergovernmental Group of Experts may wish to address the following issues:

(a) The UNCTAD World Consumer Protection Map can serve as basis for the exchange of contact information of consumer protection authorities and on consumer product safety. How can understanding on consumer product safety be further enhanced?

(b) Other than the sharing of best practices in consumer product safety, what other areas should be considered at the international level?

(c) How can UNCTAD support ongoing regional and global efforts in strengthening consumer product safety?

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[53] See https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/?event=viewProduct&reference=A12/0867/17 (accessed 24 April 2018).

[54] See http://www.aseanconsumer.org/accp/index.php?r=portal/article&id=3 (accessed 24 April 2018).

[55] See https://www.sites.oas.org/rcss/en/Pages/default.aspx (accessed 24 April 2018).

[56] OECD, 2016.

[57] See https://globalrecalls.oecd.org/front/index.html#/recalls (accessed 24 April 2018).

United Nations TD/B/C.I/CPLP/13

United Nations Conference on Trade and Development

Distr.: General
30 April 2018

Original: English

Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Consumer Protection Law and Policy
Third session
Geneva, 9 and 10 July 2018
Item 3 (c) of the provisional agenda
Voluntary peer review of consumer protection law and policy of Morocco

Voluntary peer review of consumer protection law and policy: Morocco

Overview*

* The findings, interpretations and conclusions expressed herein are those of the author and do not necessarily reflect the views of the United Nations or its officials or Member States. The present document is an overview of a full report on the voluntary peer review of consumer protection law and policy of Morocco.

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I. Introduction

1. In its resolution 70/186 of 22 December 2015 on consumer protection, the United Nations General Assembly reaffirmed the United Nations guidelines for consumer protection as a valuable set of principles for setting out the main characteristics of effective consumer protection legislation, enforcement and policy. The guidelines promote international enforcement cooperation among Member States and encourage the sharing of experiences in consumer protection. The General Assembly also decided to establish an intergovernmental group of experts on consumer protection law and policy under UNCTAD to provide the international institutional machinery for the guidelines.

2. The Intergovernmental Group of Experts on Consumer Protection Law and Policy of UNCTAD is mandated to conduct voluntary peer reviews of national consumer protection law and policy, as implemented by national consumer protection authorities.[1] Morocco was the first UNCTAD member State to volunteer.

3. The purpose of the voluntary peer reviews is to provide an external and independent assessment of the effectiveness of consumer protection law; to identify the challenges to be addressed and areas to be improved in the legal and institutional frameworks; to assess the consumer protection awareness of relevant stakeholders and their contributions in this area; to formulate and recommend appropriate measures; and to assist countries in implementing the recommendations by developing a capacity-building programme.[2]

II. Political, economic and social context

4. The Kingdom of Morocco is a constitutional, democratic, parliamentary and social monarchy, with a population of approximately 35 million inhabitants.[3] The human development index of Morocco for 2015 is 0.647. Between 1990 and 2015, in Morocco, life expectancy at birth increased by 9.6 years and the expected years of schooling increased by 5.6 years. Income per capita in Morocco increased by about 90 per cent between 1990 and 2015.[4] The World Bank recently reported that Morocco had made "undeniable economic progress" over 15 years, not only in terms of economic growth and living standards, but also in access to basic services such as electricity, water and public infrastructures.[5] Agriculture is the largest of all economic sectors, at 15 per cent of gross domestic product and accounting for 40-45 per cent of employment.[6] Tourism is the second largest sector, at 8 per cent of gross domestic product and 515,000 jobs, and with significant foreign currency earnings.[7]

5. The retail sector is evolving rapidly and has grown significantly in recent years. Likewise, electronic commerce is accelerating; the number of online purchases more than doubled in the three years leading to 2015, towards 2.5 million. The forthcoming consumer protection strategic plan of the Ministry of Industry, Investment, Commerce and Digital Economy (MIICEN) of Morocco refers to "radical changes in terms of both supply and the

[1] TD/B/C.I/CPLP/9.

[2] TD/B/C.I/CPLP/6.

[3] Data on Morocco for 2016. See World Bank, World Development Indicators database, available at http://databank.worldbank.org/data/reports.aspx?source=2&country=MAR (accessed 30 April 2018).

[4] United Nations Development Programme, 2016, Briefing note for countries on the *Human Development Report 2016: Human Development for Everyone*, Morocco, available at http://hdr.undp.org/sites/all/themes/hdr_theme/country-notes/MAR.pdf.

[5] World Bank, 2018, *Morocco 2040: Emerging by Investing in Intangible Capital*, available at https://openknowledge.worldbank.org/bitstream/handle/10986/28442/9781464810664.pdf?sequence=2&isAllowed=y.

[6] World Bank, 2017, The World Bank in Morocco, available at http://www.worldbank.org/en/country/morocco/overview (accessed 27 April 2018).

[7] Morocco, Ministry of Tourism, 2017, information communicated to members of an UNCTAD mission in December.

modalities of purchase, delivery and regulation". Nevertheless, non-digital purchasing still dominates the market, with 87 per cent of transactions.[8]

III. The substantive legislation

6. The Constitution of 2011 of Morocco refers to various issues related to consumer protection, without explicitly singling out consumers. These include "the defence and promotion of socioeconomic rights and interests", the rights of civil society to participate in public life, with privacy and with the right to information. Article 31 details citizens' rights in the domains of social protection, education, decent housing, access to water and a clean environment and sustainable development. A clause relating to the mediation office refers to "users" of services under public administration.[9]

A. Law No. 31-08 on consumer protection

7. Law No. 31-08 (2011), ordering consumer protection measures, is predominantly horizontal legislation, consisting of 206 articles. The Law establishes the fundamental consumer rights as well as scope and relevant definitions. It regulates in detail the obligations of businesses to provide information, provides protection against unfair contract terms and sets out business obligations in relation to specific business practices, such as guaranties and warranties, and deals with consumer indebtedness, consumer associations, infringements and penal sanctions.

1. Preamble, scope and objectives

8. The preamble to Law No. 31-08 sets out the fundamental rights of consumers, as follows:

- The right to information
- The right to protection of economic rights
- The right to representation
- The right to retraction
- The right to choose
- The right to be heard.

9. This list echoes some provisions of the Constitution (information, representation and economic rights). Furthermore, it also incorporates some of the key legitimate needs of Guideline 5 of the revised United Nations guidelines for consumer protection, their most frequently quoted text. [10] Article 3 of Law No. 31-08 lays down the principle that

[8] Morocco, Ministry of Industry, Investment, Commerce and Digital Economy, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

[9] Morocco, General Secretariat, 2011, *La Constitution*, Decree no. 1-11-91 (29 July 2011).

[10] See A/RES/70/186, annex. Under guideline 5, the following are the legitimate needs which the guidelines are intended to meet: (a) access by consumers to essential goods and services; (b) the protection of vulnerable and disadvantaged consumers; (c) the protection of consumers from hazards to their health and safety; (d) the promotion and protection of the economic interests of consumers; (e) access by consumers to adequate information to enable them to make informed choices according to individual wishes and needs; (f) consumer education, including education on the environmental, social and economic consequences of consumer choice; (g) availability of effective consumer dispute resolution and redress; (h) freedom to form consumer and other relevant groups or organizations and the opportunity of such organizations to present their views in decision-making processes affecting them; (i) the promotion of sustainable consumption patterns; (j) a level of protection for consumers using electronic commerce that is not less than that afforded in other forms of commerce; and (k) the protection of consumer privacy and the global free flow of information.

The right to retraction is a specific issue not featured in the Constitution of Morocco or the United Nations guidelines for consumer protection. Some of the legitimate needs listed in the United Nations guidelines are dealt with in other legislation of Morocco, such as consumer product safety (Law No. 24-09 on product and service safety, Law No. 28-07 on food product safety, Law No. 25-08 on the National Office for Food Product Safety, Law No. 13-83 on fraud repression on sold products, Law

information should be provided in a form that enables a rational choice to be made by the consumer according to needs and means.

10. The objectives contain high-level principles, such as the pro-consumer principle: "All other legislative provisions on the same subject are applicable if they are more favourable to the consumer." Article 2 of Law No. 31-08 addresses the question of definition of a consumer as follows: "All physical or moral persons who acquire or use products, goods or services, for purposes unrelated to work, for personal or familial use." Another significant element of scope is the application of consumer protection to State-owned enterprises, where the legislation of Morocco of 2011 seems to have anticipated the international trend towards including these types of businesses under application of consumer protection law, as contained in the revised United Nations guidelines for consumer protection of 2015.

2. Unfair contract terms

11. Article18 of Law No. 31-08 sets out, in a non-exhaustive list, the kind of contract term to be avoided, and article 16 demonstrates a certain flexibility in the judgment of when a contract term can be considered as abusive. Article 16 states that such consideration should take into account "the circumstances at the moment of the conclusion of the contract", reflecting also greater interest in context and principle rather than bare regulation.

3. Business practices

12. Title IV regulates in detail various business practices, including advertisement, distance contracts (which include electronic commerce), doorstep selling, discount sales, bonus sales, tie-in sales, Ponzi schemes, abuse of vulnerability and lotteries.

13. One of the fundamental consumer rights enshrined in Law 31-08 is the right to retraction, identified both in the preamble and in the text under distance contracts (articles 25–43). This is particularly relevant for online sales, as it is considered to entice consumers to trust electronic commerce (e-commerce).

14. The chapter on business practices contains a provision against the abuse of weakness or ignorance. Article 59 states that such abuse can result in the nullification of a contract and requires repayment to the consumer, plus such damages as may apply. This article is ahead of many other jurisdictions and is in line with guideline 5 of the United Nations guidelines for consumer protection, on the protection of vulnerable and disadvantaged consumers.

4. Indebtedness

15. Title VI devotes over 75 articles to consumer indebtedness, including consumer and housing credit, of the type that is more commonly found in sectoral legislation. The protection of consumers of financial services is relatively recent. Before Law No. 31-08, the governance of the sector came through the service itself, essentially a form of self-regulation or through arbitration, based partly on custom and practice and relating to 27 different laws.

5. Consumer protection associations

16. Title VII regulates the role of consumer protection associations. Their main functions are to ensure information and the promotion of consumer interests and to contribute to upholding the Law. They are required to be non-profit and operate without a business subsidy and to have no commercial advertising and no political affiliation.

17. Consumer protection associations can be recognized by the State as being of public interest on condition of meeting certain criteria listed in article 153. As yet, there are no

No. 18-88 on expiry date labelling and Law No. 75-291 on sanitary and qualitative inspection on livestock) and data protection (Law No. 09-08 on personal data protection). Morocco, General Secretariat, 2010, *Série "Documentation juridique marocaine"*.

consumer protection associations that have been awarded this status, which is a general prerequisite for judicial representation of consumers. Article 157 goes further, in envisaging the possibility of non-recognized associations to enter into judicial proceedings, having been authorized to do so by the consumer "and according to conditions set down by regulation". A decision of the Ministry of Justice to detail the modalities for delivering authorization to consumer protection associations to stand in court is currently under consideration.

18. Title VII allows consumer associations to receive public funding. Article 156 makes reference to the development of a national fund to be administered by MIICEN, with a view to "developing consumer culture". This is a pioneering initiative in the Middle East and North Africa (MENA) region, and MIICEN has invested over $1 million in the fund.

19. In line with United Nations guideline 45, on consumer education, Decree 2-12-462 also lists consumer education as an objective of consumer associations, accompanied by "orientation and awareness of sanitary, nutritional, environmental and commercial aspects". This covers a lacuna of Law No. 31-08, which does not refer directly to education campaigns by consumer associations. Education and information campaigns are directly undertaken by MIICEN and by consumer protection associations funded by the national fund.

6. Consultation mechanisms

20. Article 204 calls for the institution of a high advisory consumer council, as an independent institution, in charge of proposing and rendering opinions on proposed measures. This institution has not been established as yet, though it is currently one of the priorities of MIICEN for 2018–2021.

7. Regulatory development of Law No. 31-08

21. Law No. 31-08 foresees regulatory development of various provisions, through government regulations, known as implementing texts.[11] The legal tradition of Morocco allows for long delays between the adoption of laws and their regulatory development, which can in some instances impair the effects of legal provisions. Due to its cross-sectoral nature, consumer protection is particularly vulnerable to such delays, as consumer protection authorities rely on multiple ministries to establish the modalities of application. In the case of Morocco, the application of Law No. 31-08 requires action to be taken by a dozen ministerial departments.

22. Despite these difficulties, Law No. 31-08 has been applied through a series of 15 implementing texts (comprising decrees and decisions). These have emanated mostly from MIICEN, but also from the Ministry of the Economy and Finance and the Ministry of the Interior.[12] Many regulations apply to the technical and judicial functions of inspectorates.[13]

23. The main limitations identified by MIICEN for adequate enforcement of Law No. 31-08 include:[14]

- Absence of administrative sanctions
- Need to set up simple tools for compensation for damages outside of judicial procedures
- Restricted application of the law with focus on certain commercial practices, such as misleading advertising

[11] Articles, 3, 4, 12 and 61.

[12] Morocco, Loi no. 31-08 édictant des mesures de protection du consommateur et ses textes d'application (18 February 2011).

[13] For examples, see UNCTAD, 2018, *Voluntary Peer Review of Consumer Protection Law and Policy: Morocco* (forthcoming).

[14] Morocco, Ministry of Industry, Investment, Commerce and Digital Economy, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

- Need to reinforce the protection of consumers in relation to credit
- Need to reinforce the protection of the vulnerable population.

24. These limitations could be addressed in future amendments of Law No. 31-08, along with international best practices, in line with the United Nations guidelines for consumer protection.

B. Other relevant legislation

1. Financial services

25. Since implementation in 2015 of the new banking law, Law No. 103-12, there has been a universal right to have a bank account. Today, there are 20 types of free banking services available free of charge.[15] Sixty per cent of the Moroccan population is now covered by bank accounts. The law provides for bank deposit guarantees up to the value of approximately $8,800 and requires price indications, portability of accounts, mandatory complaints services within banks, a register of payment defaults and sanctions in cases of non-conformity with the law. Banks have to be licensed and informal loans are forbidden.[16] Interest rates for loans are regulated through the use of interest rate caps.

2. Protection of consumers against risks to health and safety

26. Law No. 28-07, on food safety, proceeds by way of determination of prior conditions of production and treatment of foodstuffs in addition to information and labelling of foodstuffs. It should be noted that the law includes the precautionary principle, also known as the precautionary approach. This principle is recognized in article 5.7 of the Agreement on the Application of Sanitary and Phytosanitary Measures of the World Trade Organization. It relates to situations in which the state of scientific knowledge may be insufficient to make a definitive judgment as to whether to block a product, but allows for a precautionary approach to be taken while the risk level is clarified.[17]

27. Law No. 24-09, on the safety of goods and services, imposes a "general safety obligation" on "producers and importers of products as much as on service providers" and indicates that penalties apply when the risk was undertaken knowingly or where the providers had a responsibility to know. This obligation avoids the problem, common in various countries, of proving prior knowledge of risk, which is a difficult exercise for enforcers. Law No. 24-09, which supplements general civil law obligations, does not extend to strict responsibility of producers and distributors, as is the case in other countries.[18]

3. Protection of consumer privacy

28. The rights of consumers to the protection of their privacy are strengthened by the Constitution of Morocco, revised in 2011, which proclaims in article 24 that "all persons have the right to protection of their private lives". Law No. 09-08, on the protection of

[15] Information communicated to UNCTAD by the Ministry of Economy and Finance of Morocco during a mission in November 2017. Law No. 103-12 regarding credit establishments and linked organizations, *Official Bulletin No. 6340* of 5 March 2015, grants the universal right to a bank account. Implementation of Law No. 103-12 is overseen by the Ministry of Economy and Finance.

[16] In 2017, for example, a licence to operate was issued for participative (Islamic) banks, as foreseen in Law No. 103-12.

[17] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication. New York and Geneva), chapter 9. The Agreement on the Application of Sanitary and Phytosanitary Measures applies to foodstuffs and not to manufactured products or services.

[18] For example, strict responsibility was introduced into European Union law by the Product Safety Directive of 1985 (modified in 1999) and adopted by the Council of the European Communities on 25 July 1985. Available at http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31985L0374&from=EN.

physical persons regarding the processing of personal data,[19] establishes the following rights:

- Requirement of express consent as a condition of data collection
- Information regarding use of data
- The right to access to data held as well as their origins and destinations
- The right to rectification without charge in the event of error within a deadline;
- The right of appeal to the National Commission for the Control of Personal Data Protection;
- The right to express opposition to the collection of the data.

29. Data users, in this context, businesses, are required to ensure that data are collected fairly, legally and transparently.

4. Standardization

30. The development of an arms-length relationship between the State and standards institutions is key to the development of standards worldwide. Law No. 12-06, on standardization, provides greater autonomy for the Moroccan Standards Institute, which had before been an integral part of MIICEN.[20] The Government of Morocco has retained certain powers of orientation, but article 22 demonstrates the intention to use such powers as advised by economic and social partners and technical committees of the Institute.

31. Morocco maintains a strong link between standardization and regulation. Article 33 of Law No. 12-06 also envisages the transition from a voluntary standard to a mandatory standard, when that is "deemed to be necessary by the competent governmental authority". However, in practice, the vast majority of standards remain voluntary. Of 14,400 adopted standards, only 280 are mandatory.

IV. Institutional framework

A. Public institutions

1. Government

32. MIICEN is responsible for the conception and implementation of government policy in the areas of industry, commerce and new technologies, except where these are assigned to other ministerial departments by laws or regulations in force.[21] One of the responsibilities of MIICEN is to "ensure control in the domains of metrology, certification, quality, safety in the enterprise, surveillance of the market and consumer protection".[22]

33. Within MIICEN, the Directorate of Consumer Protection, Market Surveillance and Quality hosts the Department for Consumer Protection (DPC), which is the consumer protection authority of Morocco. Given the horizontal nature of consumer protection, many other ministries have a stake in consumer protection.[23] DPC invests a great deal of effort in establishing bilateral cooperation arrangements with such relevant ministries.

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[19] Morocco, Law No. 09-08 on personal data protection, *Official Bulletin No. 5714* of 5 March 2009

[20] Law No. 12-06 on standardization, certification and accreditation, *Official Bulletin No. 5822* of 18 March 2010.

[21] Morocco, Ministry of Industry, Investment, Trade and Digital Economy, see http://www.mcinet.gov.ma/en/content/missions (accessed 25 April 2018).

[22] Ibid.

[23] Ministry of Energy, Mines, Water and Environment, Ministry of the Interior, Ministry of Economy and Finance, Ministry of Housing, Urbanism and City Policies, Ministry of Agriculture and Sea Fishing, Ministry of Equipment, and Transport, Ministry of Tourism, Ministry of Handicrafts, Ministry of Health, Ministry of General Affairs and Governance and Ministry of Justice. See http://www.khidmat-almostahlik.ma/portal/fr/acteurs/administration-etablissement-publique.

2. Consumer protection authority

34. **Strengthening the regulatory framework of Law No. 31-08 and its enforcement.** DPC is charged with strengthening the legal framework, overseeing application of the consumer protection law in the market, communicating with consumers and raising awareness of their rights in the marketplace, along with other relevant stakeholders, in particular consumer protection associations[24] and businesses, and developing a consumer movement. DPC consists of only about 10 staff. MIICEN has in addition more than 70 qualified and certified inspectors on the ground. The Ministry of Interior is training 400 inspectors, with the assistance of MIICEN, and these inspectors should be operational throughout the territory of Morocco by May 2018. MIICEN investigators that were trained and officially sworn in began field inspections in 2016.

35. The record of the control operations carried out up until 31 December 2017 is as follows:

- 836 controlled establishments, mainly grocery, specialty and other retail stores
- 11,636 controlled aspects (labelling, display, invoices, etc.)
- 2,429 instances of non-conformity found, mainly in relation to price display, labelling and invoices
- 105 warnings sent to offenders regarding non-compliance.

36. An e-commerce inspection within DPC carried out 120 surveillance operations, including 20 sites, which were inspected in 2016 and received admonitions. These operations led to sending more than 100 admonition letters to concerned businesses with a view to encouraging compliance with Law No. 31-08. In the past, public administrations struggled to exercise their powers under Law No. 31-08 to inspect Internet sites. Since January 2017, e-commerce is supervised by the Centre for Surveillance of Electronic Commerce, a new unit within MIICEN.[25]

37. **Support to the national consumer movement.** In 2017, the MIICEN signed new financing agreements with three federations of consumer protection associations, namely:

- The Moroccan Federation of Consumer Rights
- The National Federation of Consumer Associations
- The Southern Federation of Consumer Protection Associations.

38. In an effort to professionalize the consumer counters or advice points run by consumer protection associations, a standard operating manual has been developed by DPC.[26]

39. **Information, awareness-raising and training.** DPC carried out several information, awareness-raising and training activities, in particular:

- Consumer portal. The portal www.khidmat-almostahlik.ma is an online platform available in Arabic and French. It aims at increasing citizens' awareness of their rights. A wide range of information is available, including regulations, fact sheets, guides and contact details of consumer protection associations. The portal provides information to consumers about their legal rights and serves as an entry point to several institutions and organizations concerned with consumer protection. The portal received 41,770 visits in 2017, a year on year increase of 14 per cent. In 2017, the portal received 791 admissible claims, representing an increase of 64 per cent in relation to 2016. The sectors most concerned were telecommunications (29 per cent) and general retail (22 per cent), followed by agriculture and fishery and financial services. Regarding the types of claims, 27 per cent related to non-compliance with

[24] Regardless of whether they are considered of public interest or not (see paragraph 17 of the present document).

[25] Morocco, MIICEN, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

[26] Morocco, MIICEN, 2017, *Manuel de fonctionnement des guichets consommateur*, Rabat.

legal and conventional warranties, defective goods and after-sales service, and 24 per cent related to a lack of information on price, labelling and undue delays in delivery.

- National Consumer Days. DPC organized several annual meetings gathering all relevant stakeholders aiming to promote a culture of consumer protection in Morocco. These meetings are organized in close collaboration with the concerned partners, in particular consumer protection associations and ministerial departments. In 2017, 30 local events were organized in 28 cities. The 2018 national day was chaired by the Secretary of State of MIICEN, who stressed the Ministry's sustained commitment in relation to consumer protection, stating: "This is a priority project that places the citizen at the heart of action and for which the Government has launched a series of concrete measures".

3. National food safety office

40. The National Office for Health Security of Food Products is an agency independent from the Government, created in 2010. The Office is responsible for a wide range of food safety measures, including inspection of abattoirs, and is empowered to seize non-conforming products and destroy them if necessary, as well as to levy fines. Premises can be closed down by inspectors working from regional governors' offices. The inspectors reporting to the governorates are independent, and their powers are being brought into the National Office for Health Security of Food Products. The Office periodically mounts campaigns to warn consumers against risks, particularly during national festivities, and runs a blue-line telephone alert system.

4. Personal data protection

41. The National Commission for the Control of Personal Data Protection is an autonomous authority charged with ensuring that the use of personal data does not prejudice personal privacy. The Commission has authority over private and public institutions and their conformity with Law No. 09-08 on personal data protection. The Commission can take judicial action and apply financial and penal sanctions, in the event of infringements of the Law.[27]

42. The Commission's functions are as follows:

- Address individual complaints
- Address requests for authorization by data users (the Commission is empowered to withdraw permits to gather and keep data, thus in effect acting as granter of licence to trade)
- Keep the public register of data users
- Respond to requests for advice from Government and Parliament.

5. Standardization

43. The Moroccan Standards Institute is a public body under the umbrella of MIICEN, which assumes the secretariat function and acts as rapporteur for the High Council for Standardization, Certification and Accreditation, over which the Prime Minister presides. The High Council includes representatives of economic partners, such as sectoral chambers of commerce, labour unions, consumer protection associations and representatives of bodies that conduct research on standardization. The experience of the High Council for Standardization, Certification and Accreditation can serve as a basis for exploring development of consultation mechanisms on consumer protection issues, which could be led by DPC.[28]

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[27] Morocco, National Commission for the Control of Personal Data Protection, leaflet, available at http://www.cndp.ma/images/documents/CNDP-depliant-fr.pdf.

[28] Morocco, Law No. 12-06 relating to standardization, certification and accreditation, Decree No. 1-10-15 of 11 February 2010.

6. Financial services

44. The Central Bank has sought to link with government departments concerned with consumer protection, such as DPC and the Competition Council. Consumer associations have been able to develop model contracts with banks that incorporate international good practices, such as the United Nations guidelines for consumer protection.[29] The model contracts are published in the Official Bulletin.

45. Alternative dispute resolution is being developed in this sector. There is a mediation centre, organized by the Central Bank and banking associations, that receives 500 cases per year. A consumer has the right to go directly to the Central Bank in case of dispute. Decisions of the mediation service are binding on banks. The recommendations of the service have contributed to the development of good practices.

7. Public prosecution and the judiciary

46. The prosecutor-general's office takes criminal cases, operating under the supervision of the Ministry of Justice, with an autonomous status and its own budget. Magistrates from the judicial branch have issued a range of judgments on Law No. 31-08, strengthening it as an instrument of protection of the consumer. This has proved to be the case particularly in the field of consumer credit. Among the significant interpretations in favour of the consumer have been the following:

- Article 9: interpretation of Law No. 31-08 to be presumed to favour the consumer
- Article 34: burden of proof to reside with the supplier
- Article 202: delineation of the competence of a court in relation to the residence of the consumer
- Article 59: exploitation of the ignorance or weakness of a consumer as a criminal offence, leading to nullification of a contract
- Primacy of consumer protection over commercial law regarding bank loans.

47. This indicates the potential significance of complete application of the present Law No. 31-08, even without further amendment.

B. Other stakeholders

1. Chambers of commerce

48. There are 12 regional chambers of commerce, under the supervision of MIICEN. The chambers of commerce participate in National Quality Week, organized by the Directorate of Consumer Protection, Market Surveillance and Quality, and in events with consumer protection associations, providing, for example, briefings on Law No. 31-08.

49. The Federation of Chambers of Commerce looks forward to participating in the high advisory consumer council, as envisaged under article 204 of Law No. 31-08.[30] The council, once established, will have the potential to become a forum for the development of self-regulatory codes.

2. Consumer protection associations

50. There are 90–100 consumer protection associations currently operative at the local level, of which 38 operate a consumer counter as an advice point. Decree no. 2-12-462, which addresses the status of public interest of consumer protection associations, makes no explicit mention of the potential role of consumer protection associations in the development of public policy. The role of consumer protection associations is recognized

[29] A/RES/70/186, annex, guideline 66; Organization for Economic Cooperation and Development, 2011, Group of 20 high-level principles on financial consumer protection, available at https://www.oecd.org/g20/topics/financial-sector-reform/48892010.pdf.

[30] Morocco, MIICEN, *Stratégie de protection du consommateur, 2017–2022* (forthcoming).

by means of mention of their intended inclusion within the high advisory consumer council, yet to be established, as envisaged in 2011 in Law No. 31-08.

51. Though article 6 of Decree no. 2-12-462 refers to consumers' representation, there is little further detail.[31] Article 6 of the Decree (objectives and missions) states that a major objective is "to contribute to extrajudicial dispute resolution". Article 24 requires that such resolution be accompanied by attempts to reach an amicable solution, in default of which court proceedings can be envisaged. In fact, the National Federation of Consumer Associations estimates that 72 per cent of disputes brought to them are settled amicably. Yet, consumer protection associations consider that they are wrongly excluded from judicial proceedings. Enactment of a decision that addresses the issue of consumer protection associations' standing in dispute resolution is needed to resolve this issue. The legislation does not seem to have caught up with the actual activities.

52. Furthermore, Law No. 31-08 grants consumer protection associations the right to intervene in judicial proceedings on behalf of consumers. However, this right has not been exercised by consumer protection associations as envisaged. One explanation might be the onerous conditions for exercising such a right (declaration of public interest or special authorization). Another explanation might be the lack of technical capacities for consumer protection associations to intervene in court.

V. International cooperation

53. MIICEN and DPC have proved very active in strengthening international cooperation with neighbouring countries, for example, through a twinning programme with the European Union within the framework of a European cooperation agreement. This programme, which linked MIICEN with a Franco–Belgian consortium, started in May 2015 and continued for a period of 27 months.[32]

54. Furthermore, Morocco is one of the eight beneficiaries (including Algeria, Egypt, Jordan, Lebanon, Tunisia, Yemen and the State of Palestine) of the UNCTAD MENA technical cooperation programme (2015–2019), funded by Sweden, promoting regional economic integration through improved competition and consumer policies, aiming for a positive impact on gender balance, good governance and anticorruption. This programme privileges instruments and initiatives, namely the strengthening of capacities of public bodies and relevant stakeholders, with a regional focus providing the sharing of experiences and for increased cooperation. One of the programme's outputs is the *Guidelines on Consumer Protection: Agency Structure and Effectiveness*[33] for the MENA region, drafted in 2017 on the basis of the international benchmarks for consumer protection.

55. At the same time, there are other forms of cooperation that can be envisaged by DPC. For example, Morocco is seeking greater involvement and communication with the European Union's system of notification of dangerous non-food products.[34] Also in the area of product safety and more recently, the Organization for Economic Cooperation and Development has developed the Global Recalls portal, [35] a worldwide network for notification of products withdrawn from national markets. The portal is not restricted to member States of the Organization for Economic Cooperation and Development. The portal is regularly updated and includes information on mandatory and voluntary consumer product recalls that were issued by a governmental body. Consumers and businesses have access to the portal and global coverage is envisaged eventually.

[31] Decree No. 2-12-462 of 14 November 2012 on the model statutes of consumer protection associations recognized as having public interest status.

[32] Protecting the Moroccan consumer, twinning project no. MA/34, under the Réussir le Status avancé programme (ENPI/2011/022-778), financed by the European Union.

[33] UNCTAD, 2017, *Guidelines on Consumer Protection: Agency Structure and Effectiveness* (United Nations publication. New York and Geneva).

[34] Rapid Alert System for dangerous non-food products of the European Commission, available at https://ec.europa.eu/consumers/consumers_safety/safety_products/rapex/alerts/.

[35] https://globalrecalls.oecd.org/.

56. The International Consumer Protection and Enforcement Network[16] is composed of organizations in over 50 countries (though Morocco is not a member) and aims at sharing information about cross-border commercial activities that may result in consumer detriment. Membership is predominantly from countries of the Organization for Economic Cooperation and Development, but other countries are also members. Another relevant network for exchanges is the African Consumer Protection Dialogue, supported by the Federal Trade Commission of the United States of America. It may be beneficial for Morocco to participate in such forums for the purposes of increasing capacities and strengthening cooperation.

VI. Conclusions and recommendations

A. Conclusions

57. The legal and institutional framework of Morocco for consumer protection is well established and fully operational. Morocco has been ahead of other jurisdictions in certain fields such as enacting a comprehensive consumer protection legislation since 2011, covering basic rights and obligations of consumers and businesses and providing an enabling environment for consumer protection organizations.

58. The institutional framework for consumer protection in Morocco is comprehensive and complex. As a result of consumer protection's horizontal nature, consumer protection responsibilities are shared among various public authorities, as is the case in many other countries. An interministerial approach is thus essential, reinforced by training and briefing in all the relevant ministries. The pedagogical approach taken by DPC is widely endorsed by the other ministries and reduces the risk of duplication.

59. Morocco enjoys a vibrant network businesses and consumer protection associations. DPC has invested considerable efforts in raising awareness and capacities among businesses and consumer associations. DPC has been discharging its functions effectively and is increasingly recognized as the focal point on consumer protection issues at the national, regional and international levels.

60. The recently revised United Nations guidelines for consumer protection provide valuable guidance on possible future improvements both at the legal and institutional levels. Furthermore, the UNCTAD *Guidelines on Consumer Protection: Agency Structure and Effectiveness* for the MENA region contain several recommendations to improve the legal and institutional frameworks.

B. Recommendations

1. Substantive aspects of Law No. 31-08

(a) Regulatory development

61. For effective implementation of Law No. 31-08, Morocco needs to complete the adoption of its implementing legislation. Although there have been notable efforts in this direction (with two decrees and 13 decisions issued), interministerial cooperation needs to be pursued in order to ensure there are no regulatory limitations to full applicability of Law No. 31-08 by consumer protection agencies and their agents.

(b) Principles for good business practices

62. Law No. 31-08 deals in detail with many elements of commercial practice described in the forthcoming UNCTAD *Voluntary Peer Review of Consumer Protection Law and Policy: Morocco*. It also sets out the principle that, in case of ambiguity in contracts, the benefit of the interpretation should go to the consumer. Abuse of ignorance or vulnerability

[16] https://www.icpen.org/

on the part of the consumer is also penalized under article 59; its application can result in the nullification of contracts and could be perhaps be further developed in Law No. 31-08 or in regulations. This could for example be extended to aggressive marketing practices; under such situations, those covered by the concept of vulnerability could extend to a relatively wide range of the population.

63. Article 59 is a good example of principles-based legislation extending a general level of protection. A wider use of principles-based legislation is advisable. Experience in many jurisdictions suggests that highly detailed proscriptions of identified practices can lead to businesses responding by developing procedures designed to evade legal limitations. More flexible legislation based on principles can provide a valuable foundation for more detailed provisions in subsequent regulations and policies.

64. In particular, article 18 of Law No. 31-08 lists types of contract terms considered to be abusive, while article 16 refers to the overall context of the transaction. It is not necessary that every example be precise, nor should the list be exhaustive; that is, other commercial practices not listed should be admissible. It is thus recommended that Law No. 31-08 be amended to include common examples of unfair commercial practices applicable to all sectors of commerce and that their determination be left to regulatory, case law or enforcement practice.

(c) Access to justice

65. Although Law No. 31-08 grants consumer protection associations the right to intervene in judicial proceedings on behalf of consumers, this right has not been exercised by consumer protection associations as envisaged. It is recommended that Decree no. 2-12-462 of 14 November 2012 setting the conditions for consumer protection associations participation in judicial proceeding be revised, in order to facilitate the exercise of this right. Furthermore, DPC could provide legal training to consumer protection federations to reinforce their litigation capacities.

(d) Alternative dispute resolution

66. Consumer dispute resolution and redress in Morocco are exercised by the judicial branch. However, mediation to settle consumer disputes is being introduced on a sectoral basis in Morocco in the financial services and telecommunications sectors. This could be extended to other sectors in order to cover as many consumer relations as possible, ideally covering all economic sectors. In United Nations guidelines for consumer protection, guidelines 37 to 41 on dispute resolution and redress provide useful recommendations in this regard.

67. DPC is in a privileged position to encourage the development of consumer mediation, as it can coordinate and ensure the participation of relevant ministries, public institutions and other stakeholders. The DPC Internet portal could serve as a basis to develop and disseminate online dispute resolution for consumer disputes.

(e) Electronic commerce

68. In line with guidelines 5 (j) (legitimate needs) and 63 (e-commerce) of the United Nations guidelines for consumer protection, Morocco should ensure that online consumers enjoy a level of protection that is no less than that afforded to other forms of commerce.

69. Law No. 31-08 contains provisions relating to e-commerce, including the right to retraction, which might be reviewed, in light of the revised United Nations guidelines for consumer protection, to address new challenges such as the obligations of platforms. In so doing, it is recommended that Morocco should preserve principles-based regulation to allow for future market developments.

(f) Financial services

70. Law No. 31-08 contains very detailed provisions regarding consumer credit and housing loans. However, it is silent on overindebtedness, its prevention and its

consequences, and on inclusion, both of which are emerging best international practices and are present in the revised United Nations guidelines for consumer protection.

71. In particular, it is recommended that Law No. 31-08 should include more general provisions on the promotion and protection of consumers' broad financial interests and include enabling regulations to promote financial inclusion and protection against overindebtedness. The relationship between financial services providers and their authorized agents may best be regulated by the law.[37]

72. For example, Law No. 31-08 could establish the obligation of verification of creditworthiness of borrowers. This would contribute to the development of responsible lending, an emerging principle that is also endorsed by the guideline 66 (f) of the United Nations guidelines for consumer protection. Law No. 31-08 could also envisage the development of debt repayment plans for cases where indebtedness is not linked to infractions from either the consumer or the lender, but rather to life events.

(g) Enforcement powers

73. Law No. 31-08 foresees the judicial enforcement of consumer protection. In order to complement judicial action, Law No. 31-08 could be amended to allow for administrative enforcement. This would reinforce the market surveillance of DPC and allow DPC to move beyond its current admonitions, to imposing administrative injunctions and sanctions for breaches of consumer protection laws. Direct administrative enforcement powers could be granted to enforcement bodies, in particular DPC, without the need for them to resort to the courts.

(h) Codification

74. The extensive consumer protection legislation of Morocco encompasses most economic activities and extends through various pieces of legislation. For example, Law No. 31-08 deals with consumer credit while other, sectoral legislation includes consumers' rights, as is the case of financial services and public utilities laws.

75. In order to ensure a comprehensive and coherent regulation of consumer protection and to increase stakeholders grasp of consumer complex issues, some countries, such as Brazil and France, have developed a consumer code. Such codes gather and systematize consumer protection legislation and rationalize institutional frameworks. The legal tradition of Morocco of codification (civil, commercial and labour laws are already codified) could allow for the development of a code. This would also provide an occasion to review the consumer protection legislation of Morocco as a whole, in the context of the United Nations guidelines for consumer protection.

2. Institutional frameworks

(a) Enforcement, coordination and public profile

76. Law No. 31-08 could be strengthened to allow for the administrative enforcement of consumer protection. As the consumer protection authority of Morocco, DPC is in a good position to assume such powers, including conducting investigations and ordering administrative sanctions and injunctions.

77. DPC has invested considerable efforts in ensuring coordination with other ministries and departments, as well as consultation with consumer protection associations and business representatives. Developing formalized consultation mechanisms, such as the high advisory consumer council of article 205 of Law No. 31-08, can prove beneficial in this sense. DPC could also assume a more active role in providing advisory opinions to government draft regulations and policies, to ensure that consumer interests are taken into account.

78. DPC should further reinforce its role of serving as focal point for consumer protection matters, by promoting its public profile. The DPC online portal provides easily

[37] See A/RES/70/186, annex, guidelines 11 and 66 to 68.

accessible information to consumers and allows for electronic claims to be filed. The website should be promoted and its content enriched with education and information campaigns, publications, research and studies that DPC may conduct in the future. DPC could also harness social media platforms and hotlines to build its public profile vis-à-vis consumers and businesses.

(b) Building of capacities

79. DPC could develop standardized training programmes for Government officials and judges using UNCTAD's capacity building instruments such as the UNCTAD *Manual on Consumer Protection*,[38] and the *Guidelines on Consumer Protection: Agency Structure and Effectiveness* of UNCTAD for the MENA region. DPC could also develop a general training programme for consumer protection associations and businesses, for which UNCTAD published the *Guidelines on Consumer Protection: Business Engagement*[39] for the MENA region, while guidelines on consumer associations for the MENA region are forthcoming.

80. In this effort, DPC should seek to establish stable partnerships with federations of consumer associations, chambers of commerce and academic institutions through training-of-trainers activities, thus ensuring a positive multiplier effect. DPC could also envisage developing joint awareness-raising campaigns with consumer protection associations.[40]

(c) Consumer protection associations

81. Financial support of Morocco for consumer protection associations is a pioneering experience in the MENA region, addressing the perennial problem of consumer associations' sustainability. As the national fund for consumer protection associations is being deployed, it is important to ensure the accountability of consumer protection association activities, and assess high impact results, through continuous evaluation and auditing procedures. In contributing to the professionalization of consumer protection associations, DPC should also pursue providing them with training, especially if new pieces of regulation enable consumer protection associations to pursue new functions.

(d) Resources

82. In line with guideline 15, of the United Nations guidelines for consumer protection, on national consumer protection policy, Morocco should work towards ensuring that consumer protection enforcement agencies have the necessary human and financial resources to promote effective compliance and to obtain or facilitate redress for consumers in appropriate cases. DPC has a presence in all of the territory of Morocco, through its 29 regional delegations. However, the current human and financial resources available impair regional offices from discharging DPC functions fully, especially with regard to surveillance and awareness raising. For this purpose, it is recommended that DPC staff be increased and that training be provided.

(e) International cooperation

83. DPC has been active in accessing international cooperation and sharing of best practices at UNCTAD and the European. Participation in the International Consumer Protection and Enforcement Network and the African Consumer Protection Dialogue may prove particularly beneficial, should DPC assume enforcement powers. DPC could also explore the possibility of concluding agreements with peer authorities to leverage existing international experience, in line with guideline 82, of the United Nations guidelines for consumer protection, on cross-border cooperation. DPC should take advantage of international meetings to become familiar with international best practices and, in turn, integrate them into its own practice.

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[38] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication. New York and Geneva)

[39] UNCTAD, 2017 (United Nations publication. New York and Geneva)

[40] Law No. 31-08 envisages a single federation.

United Nations TD/B/C.I/CPLP/14

United Nations Conference on Trade and Development

Distr.: General
30 April 2018

Original: English

Trade and Development Board
Trade and Development Commission
Intergovernmental Group of Experts on Consumer Protection Law and Policy
Third session
Geneva, 9 and 10 July 2018
Item 3(b) of the provisional agenda
Review of capacity-building in and technical assistance on consumer protection law and policy

Review of capacity-building in and technical assistance on competition and consumer protection law and policy

Note by the UNCTAD secretariat

Executive summary

UNCTAD provides capacity-building and technical assistance in competition and consumer protection law and policy to developing countries and countries with economies in transition in accordance with requests received and available resources. These activities include national and regional assistance in drafting competition and consumer protection laws and applying guidelines, as well as institutional capacity for better enforcement of such laws. In addition, activities include advocacy for the creation of a competition culture and the promotion of consumer welfare. The intervention strategy of UNCTAD in providing capacity-building is to establish new institutional and regulatory mechanisms for the enforcement of competition and consumer protection policy at the national and regional levels in line with the requirements of the 2030 Agenda for Sustainable Development.

This note is a progress report on the capacity-building and technical cooperation activities in competition and consumer protection law and policy carried out by UNCTAD in 2017–2018.

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Introduction

1. UNCTAD is the focal point for competition law and policy and consumer protection law and policy with the United Nations system. UNCTAD aims to assist developing countries in better participating in the global economy, and technical cooperation is a core activity.

2. The Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices[1] adopted by the General Assembly in resolution 35/63 of 5 December 1980 instructs UNCTAD and its member States to provide technical assistance, advisory and training programmes on restrictive business practices, particularly for developing countries.

3. The revised United Nations guidelines for consumer protection adopted by the General Assembly in resolution 70/186 of 22 December 2015 states that the Intergovernmental Group of Experts will "provide capacity-building and technical assistance to developing countries and economies in transition in formulating and enforcing consumer protection laws and policies" (section VII.B, paragraph 97 (e)).

4. Further, in the agreed conclusions adopted by the sixteenth session of the Intergovernmental Group of Experts on Competition Law and Policy,[2] the UNCTAD secretariat is requested to prepare, for the consideration of the seventeenth session, an updated review of capacity-building and technical assistance activities, taking into account information received from member States by 30 January 2018.

5. In the agreed conclusions adopted by the second session of the Intergovernmental Group of Experts on Consumer Protection Law and Policy,[3] the UNCTAD secretariat is requested to present, at the third session, an updated review of capacity-building and technical assistance in consumer protection law and policy.

6. Accordingly, this note contains information on the capacity-building and technical cooperation activities of the UNCTAD secretariat in competition and consumer protection law and policy in 2017–2018.

7. The report begins with the framework for the provision of capacity-building and technical cooperation in competition and consumer protection respectively, followed by a short presentation of ongoing UNCTAD programmes according to the nature of the activity as follows:

(a) Legal and institutional framework: Reviewing the status of laws and policies and setting up relevant institutions;

(b) Strengthening human resources capacities and implementing advocacy and awareness-raising activities;

(c) Digital tools and market studies: Knowledge management platforms and market studies;

(d) Strengthening partnerships and furthering South–South cooperation: Expert meetings, international/regional forums and partnerships.

8. The report concludes with an impact assessment of UNCTAD interventions and draws some lessons from the implementation of activities in the beneficiary countries.

[1] TD/RBP/CONF.10/Rev.2, section F, paras. 6 and 7, available at http://unctad.org/en/docs/tdrbpconf10r2.en.pdf (accessed 29 April 2018).

[2] TD/B/C.I/CLP/47, para. 10.

[3] TD/B/C.I/CPLP/9, para. 14.

I. Technical assistance and capacity-building framework

A. UNCTAD mandate on competition law and policy

9. The UNCTAD mandate dates back to the adoption of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices in 1980. The Set plays an important role in encouraging the adoption and strengthening of laws and policies in this area at the national and regional levels.

10. The resolution of the Seventh United Nations Review Conference to Review All Aspects of the Set of Multilaterally Agreed Equitable Principles and Rules for the Control of Restrictive Business Practices "endorses the UNCTAD secretariat's newly adopted global strategy as a response to increased needs for technical cooperation and assistance across both public and private sectors for all developing countries, particularly among small island developing States; landlocked developing countries and other structurally weak, vulnerable and small economies; and countries in transition". It also requests UNCTAD to "perform, in consultation with relevant organizations and technical assistance providers, a review of technical cooperation activities, to avoid duplication and encourage providers and recipients of technical cooperation to recognize the results of the substantive work of UNCTAD", as well as to "identify priority areas and issues of competition law and policy for the implementation of technical cooperation activities, including problems for consideration and action within regional and subregional settings", and to "widen the search for potential donors and mobilize resources for long-term strategic interventions".[4]

11. This was confirmed in the Nairobi Maafikiano,[5] adopted by the fourteenth session of the United Nations Conference on Trade and Development in July 2016.

Box 1
Nairobi Maafikiano

From decision to action: Moving towards an inclusive and equitable global economic environment for trade and development

69. Fair, sound and robust national competition and consumer protection laws and policies are also important, as is international cooperation, information exchange and capacity-building in these areas, particularly in light of the expansion of global markets, the increasing role of transnational companies, the need for enhanced transparency and accountability, the information and communications technology revolution and the emergence of e-commerce.

76 (x).[UNCTAD should] "Continue to assist developing countries and countries with economies in transition to formulate and implement competition and consumer protection policies and laws, including through voluntary peer reviews and the sharing of best practices; as well as facilitating international cooperation among competition and consumer protection agencies together with other relevant international organizations, taking into account the revised guidelines for consumer protection".

Source: TD/519/Add.2.

B. UNCTAD mandate on consumer protection

12. The General Assembly, in resolution 70/186 on consumer protection on 22 December 2015, adopted the revised United Nations guidelines for consumer protection and established an intergovernmental group of experts on consumer protection law and policy within the framework of an existing commission of the Trade and Development Board of UNCTAD to serve as the international institutional machinery for the guidelines.

[4] TD/RBP/CONF.8/11.
[5] Paras. 69 and 76 (x).

13. Among other functions, the Intergovernmental Group of Experts on Consumer Protection Law and Policy must "provide capacity-building and technical assistance to developing countries and economies in transition in formulating and enforcing consumer protection laws and policies".[6]

II. UNCTAD intervention strategy

14. The global strategy on competition and consumer protection policies endorsed by the Review Conference was derived from experience gained by UNCTAD in implementing capacity-building activities in the developing world.[7] To ensure buy-in and commitment by beneficiary countries, all activities are planned and implemented in close cooperation with their competition and consumer protection agencies, as well as other national, regional and global networks, where appropriate. The strategy focuses on the following areas:

(a) Technical assistance for competition and consumer protection policy and regulation;

(b) An enabling environment for the private sector;

(c) Competition neutrality;

(d) Expanded regional focus;

(e) Follow-up and impact assessment of activities.

15. Competition and consumer protection policies cross-cut these areas and seek to promote stable economic conditions, strengthen competitiveness, support trade diversification, mobilize domestic and foreign investment, and improve basic infrastructure. Emphasis is placed on private sector development as a tool for promoting growth and reducing poverty. Such activities are part of the overall framework of UNCTAD technical assistance, which involves the consolidation of projects and development of thematic clusters.[8] The thematic cluster of competition policy and consumer protection encompasses the strengthening of institutional capacities in competition and consumer protection laws and policy, the formulation and enforcement of competition and consumer protection rules, and the strengthening of national and regional competition policy and consumer protection in Africa, Asia and the Pacific, the Balkans, Latin America and Caribbean, and the Middle East and North Africa.

16. Further, since the deployment of its operations in North Africa and the Middle East through the Middle East and North Africa Region programme, gender issues are being progressively mainstreamed in UNCTAD capacity-building in competition and consumer protection policy in the developing world. For example, the revision of the competition rules for the Central African Economic and Monetary Community conducted by UNCTAD in November 2017 contains a proposal to introduce in article 17 of the rules the notion of gender parity in the composition of the board of the regional competition authority to be created in this region. If the UNCTAD proposal is endorsed by the Council of Ministers of the Community, which will decide upon the adoption of these rules, it would be an innovative way to involve women in the ruling system related to the enforcement of competition law in Africa. This innovation is in line with the Sustainable Development Goals of the 2030 Agenda for Sustainable Development and is reinforced by paragraph 55 (bb) of the Nairobi Maafikiano, which recommends that UNCTAD "reinforce its work on the links between gender equality, women's and girls' empowerment and trade and development, and support member States in the design and implementation of policies and the establishment of institutions that support women's economic empowerment, economic security and rights, and enhance their economic opportunities".

[6] A/RES/70/186, para. 97 (e).

[7] See TD/RBP/CONF.8/7.

[8] See TD/B/WP/198/Rev.1.

III. Activities implemented in 2017–2018

17. In 2017–2018, UNCTAD delivered various national and regional projects in the developing world. This section opens with a brief description of the projects that are under way, followed by the activities within projects, as well as other types of cooperation. Projects are presented in chronological order, beginning with the earliest.

A. Ongoing projects

18. Since 2003, the UNCTAD Competition and Consumer Protection Policies for Latin America programme (COMPAL) has been providing capacity-building and institutional strengthening in competition and consumer protection matters to 17 beneficiary countries and one regional organization in Latin America[9] supported by the State Secretariat for Economic Affairs of Switzerland. Its purpose is to provide beneficiary countries with the necessary tools to implement competition policies in their markets and improve consumer welfare, contributing to the inclusive and sustainable development of its members.

19. Its third phase, which began in 2015, has a focus on deepening regional cooperation and enhancing the capacities of the private sector. In 2017, COMPAL implemented 90 per cent of the activities it had planned for the last year. As requested by beneficiary competition and consumer protection agencies, COMPAL has also reached out to other stakeholders such as the judiciary and businesses.

20. The UNCTAD Ethiopia project aims to strengthen the capacities of the Trade Competition and Consumer Protection Authority of the country to enforce competition and consumer protection policies, provide the national agency with tools to improve the legal and institutional framework, and lay the foundations for more effective competition law enforcement. To reach these objectives, the project aims to raise awareness among Government officials, sector regulators, policymakers, businesses and consumers about competition and consumer protection. The project, fully financed by the Grand Duchy of Luxembourg, was launched in January 2015 and will reach completion in 2018.

21. The Middle East and North Africa Region programme of UNCTAD aims primarily to promote regional economic integration by improving competition and consumer protection policies and thus foster anti-corruption, good governance and gender equality in the region. The programme's broad scope involves close engagement not only with the beneficiaries' competition authorities and consumer protection agencies and government bodies, but also with sectoral regulators, consumer organizations, business associations, the judiciary and academia. The programme aims to establish networks between the relevant stakeholders for increased cooperation at the regional level. Launched in 2015, the programme is fully funded by the Government of Sweden and benefits the following countries: Algeria, Egypt, Jordan, Lebanon, Morocco, Tunisia and Yemen.

22. The regional programme for members of the Central African Economic and Monetary Community was initiated in 2017. Funded by the European Union, the programme aims to develop and consolidate the legal and institutional framework for the promotion of competition and consumer protection policies in Central Africa, particularly in the Community,[10] the Democratic Republic of the Congo, and Sao Tome and Principe. It also aims to operationalize the competitiveness monitoring body of the Community to update and monitor the application of regional competition rules. These include supporting the objectives of national competition structures to promote economic efficiency and consumer interests by strengthening the institutional capacity for market regulation in Central Africa. The effective implementation of these mechanisms will contribute to the

[9] In 2018, COMPAL welcomed Brazil and the Andean Community to its network, which is composed of the following members: Argentina, Brazil, the Plurinational State of Bolivia, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay and the Andean Community.

[10] The Community is made up of Cameroon, the Central African Republic, Chad, the Republic of the Congo, Equatorial Guinea and Gabon.

improvement of the business environment in Central Africa with a view to building a competitive subregional economy, integrated into the world economy and stimulating growth and development while ensuring consumer protection.

23. UNCTAD has worked closely with the secretariat of the Association of Southeast Asian Nations (ASEAN) and its member States for several years with the support of the German Agency for International Cooperation. Projects include the ASEAN Competition Action Plan for 2016–2025; support for training and new initiatives, such as the ASEAN Research Centre on Competition; sharing experience in international best practices in consumer protection; and providing substantive inputs on ongoing work and new instruments, such as the ASEAN consumer empowerment index.

24. The Sofia Competition Forum was established in July 2012 as joint initiative of UNCTAD and the Bulgarian Commission on the Protection of Competition. The Forum aims to assist the Balkan competition authorities in adopting and enforcing competition law in compliance with the best European and international practices and to maximize the benefits of well-functioning markets for their countries. The main beneficiary competition authorities are those of Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia and Serbia. Beneficiaries are committed to furthering cooperation among themselves and contributing to the activities and initiatives of the Forum.

B. Legal and institutional framework: Reviewing the status of legislation and policy and setting up relevant institutions

25. In the spirit of enhancing competition culture among the business community, COMPAL produced two sets of guidelines for business to better understand and apply competition law in Colombia and Peru, one on competition and consumer protection compliance and the other on leniency programmes. One of the agencies reported that a challenge faced during the elaboration of the guidelines was that the expert was not national and recommended that national experts should acquire a better grasp of national legislation and practices. The guidelines are planned for dissemination in both countries in May 2018.

26. Under the Ethiopia project, UNCTAD implemented a series of guidelines and manuals aimed at facilitating better implementation of the competition law of Ethiopia. In October 2017, 40 participants attended a workshop for officials of the Trade Competition and Consumer Protection Authority, judges and prosecutors. The aim of the workshop was to present and validate the cartel investigation manual and to cover the substantive aspects of cartel investigations, case examples and application of the Trade Competition and Consumer Protection Proclamation (No. 813/2013) to cartel cases in Ethiopia.

27. To validate the guidelines on mergers and abuse of dominant position, a training workshop was held in December 2017, aimed at enhancing capacities of the Authority in merger analysis and handling abuse of dominance cases. The group of trainers was mostly composed of women experts in competition issues and members from the South African comp..tition authority.

28. UNCTAD provided support in revising the competition law of Algeria and in drafting the consumer protection law of Jordan and the competition law of Palestine. It also prepared guidelines on competition (competitive neutrality) and consumer protection (agency structure and effectiveness, and business engagement) for validation and dissemination at the regional level in late 2017 and 2018. These are helpful tools for beneficiaries in their efforts to make their institutions more efficient and to achieve better regulation and increased convergence among their competition and consumer protection regimes in the Middle East and North Africa Region.

29. Under the Community project, UNCTAD conducted the revision of the draft competition rules of the Democratic Republic of the Congo (2014) based on international best practices, including the Set. UNCTAD also drafted the consumer protection law of the Democratic Republic of the Congo based on the guidelines for consumer protection.

Furthermore, UNCTAD conducted the revision of the competition rules of the Community and drafted the regional guidelines on consumer protection. Subsequently UNCTAD organized a technical workshop to assess and validate the Community's revised competition rules and the draft guidelines for consumer protection in Douala, Cameroon, in November 2017.

30. As part of a European Union cooperation project to support the competition agency of Georgia, UNCTAD was invited to contribute to the advocacy of competition law and policy in that country to the Government and the Parliament highlighting its most important features, as a revision of the competition law is under way. UNCTAD also underscored the importance of the consumer protection law and its interaction with competition law and policy through policy recommendations.

31. UNCTAD is providing assistance to the Government of Paraguay in the revision of applicable legislation on consumer protection, taking into consideration the revised guidelines for consumer protection and consumer issues relating to e-commerce.

C. Strengthening human resources capacities and implementing advocacy and awareness-raising activities

32. Under the Middle East and North Africa Region programme, UNCTAD, in cooperation with the Ministry of Economy and Trade of Lebanon, launched a regional training centre in Beirut in April 2017, following the signature of a memorandum of understanding. The centre will disseminate knowledge and contribute to reinforcing the capacities of beneficiaries in the Middle East and North Africa Region in consumer protection through training and the circulation of material, data and working tools developed for this programme. It will deliver training and support information exchange through courses in Arabic and French.

33. In May 2017, the programme organized a national awareness-raising seminar on competition law and policy, which was targeted at Ministry of Commerce officials, Competition Council members, parliamentarians, judges and representatives of academia. The programme also organized an assessment of the competition law of Algeria based on the amendments proposed by the Competition Council in December 2016.

34. Also in May, COMPAL organized a workshop in Montevideo on digital markets in Latin America. Fifty competition and consumer protection experts from Argentina, Chile, Colombia, Ecuador, Honduras, Mexico, Panama, Paraguay, Peru, the Dominican Republic, Spain, Switzerland and the European Union met to discuss issues on consumer protection and competition in digital markets, especially implications for consumer relations and the structure of the new digital markets, the use of data, as well as collaborative economies and the impact of digital markets on regional cooperation. The activity was co-hosted with the Uruguayan Consumer Protection Agency, the Commission for the Promotion and Defence of Competition of Uruguay and the Spanish Agency for International Development. The structure of the workshop on parallel sessions (one devoted to competition and the other to consumer protection) facilitated the exchange of experiences in both areas and stressed the importance of coordination and exchange of information between regional agencies for the benefit of markets and consumers. Fifty per cent of the participants and most of the facilitators were women.

35. In coordination with the National Institute for the Defence of Competition and the Protection of Intellectual Property, COMPAL organized the third edition of the School of Consumer Protection in Lima in May. The main objective of the one-week intensive course was to explore the key aspects of consumer education and voluntary compliance campaigns for businesses, with an emphasis on cases of more experienced countries, best international practices and impact, as well as national and international solutions, main challenges and needs. Training was received by 31 officials, 65 percent of which were women, in a face-to-face course delivered by academics, former heads of Latin American agencies and representatives of the Catalan consumer protection agency. The School expects the course to be replicated in their home consumer protection agencies, for which a training-of-trainers module for participants is facilitated. The course was attended by governmental officials

from Argentina, Colombia, Chile, Costa Rica, the Dominican Republic, El Salvador, Mexico, Panama and Peru. National replications were completed in August, reaching a total of 461 staff members from nine countries who received training.

36. In July, UNCTAD held a workshop for case handlers from African competition agencies in collaboration with the Japan Fair Trade Commission. The workshop aimed to strengthen capacities to combat cartel and bid rigging in public procurement and covered the presentation of international best practices in the following areas: investigative tools, detecting violations, handling of complaints and methods for conducting a preliminary investigation, planning on-the-spot inspections, gathering and utilizing digital evidence, interview techniques and competition advocacy.

37. Under the Ethiopia project, UNCTAD organized two courses on competition law enforcement for judges and prosecutors in 2017 as a follow-up to training provided in 2016 to familiarize them with primary economic and legal concepts relating to this area.

38. In July, a study visit to the competition authority of France was organized for the competition authorities in the Middle East and North Africa Region. The study visit focused on international cooperation and the European Competition Network, investigation techniques, leniency programmes and the importance of economic analysis.

39. Also in July, a national awareness-raising seminar on consumer protection law and policy was held in Jordan under the Middle East and North Africa Region programme. At the seminar, guidelines for consumer protection and other global guidelines on standards, telecommunications and financial services were presented and discussed with stakeholders. The UNCTAD consultant shared his analysis of the Consumer Protection Act of Jordan and discussed issues related to e-commerce.

40. In November, COMPAL organized a high-level intensive course on investigation techniques for operative staff of competition agencies in cooperation with the National Institute for the Defence of Competition and the Protection of Intellectual Property in Lima. Some 30 officials from Latin American competition agencies in charge of investigations in their agencies participated in a one-week face-to-face course aimed primarily at introducing the mechanisms and scope of application of research techniques, including the key aspects of design, objectives, evaluation and challenges. The comparative analysis of its application in different jurisdictions helped identify the characteristics and peculiarities that are essential to ensure the success of the investigations in a specific institutional context. The course was delivered by an expert and representatives from the competition agencies of Brazil, Peru and Spain. The course also included a training-of-trainers session to facilitate the phase for replication of the course in their home agencies. Governmental officials from Argentina, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Nicaragua, Panama, Paraguay, Peru and Uruguay attended the course. National replications were completed in March 2018, resulting in a total of 291 people trained in this subject. On average, participants increased their competencies in investigation techniques by 20 per cent.

41. COMPAL also organized a three-day intensive course on the principles of consumer protection for judges in 17 beneficiary countries in November. The course gathered 60 high-court judges from: Argentina, the Plurinational State of Bolivia, Brazil, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, Guatemala, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru and Uruguay, as well as the Andean Community. The course laid the foundations for the exchange of judicial experiences in the resolution of consumer protection cases. The course also aimed to promote the enforcement of consumer protection law in Latin America in a coherent and uniform manner, within the domain of each country's legislation. COMPAL aims to create the first regional learning community to generate a source of knowledge aimed at providing support to entities in charge of ensuring consumer protection so they can make informed and homogeneous decisions. Further, it aims to promote a culture that encourages the good management of markets to contribute to the economic welfare of citizens. The course facilitators were women judges from Brazil and Chile.

42. As part of the Ethiopia project based on South–South cooperation, UNCTAD in November organized a one-week study tour for the newly appointed head of the Trade Competition and Consumer Protection Authority to visit the Zambian Competition and

Consumer Protection Commission, an experienced authority that functioned smoothly and efficiently.

43. As part of the project of the Central African Economic and Monetary Community, a regional official launch seminar was organized in November in Douala for representatives of the competition and consumer protection authorities of beneficiary countries and regional partner institutions, to inform participants on how to design and effectively implement competition and consumer protection law at the national and regional levels based on international best practices, including the Set. The seminar also focused on the competition law of the Central African Economic and Monetary Community and the presentation of the first draft of the regional directive on consumer protection in Central Africa. The following topics were the subject of presentations and discussion:

(a) Gender, competition policy and consumer protection policy;

(b) Challenges and priorities of new competition agencies in enacting competition legislation;

(c) Stakes of the preliminary draft of the directive on the protection of consumers in Central Africa;

(d) Regional integration and competition policy (the West African Economic and Monetary Union, the Economic Community of West African States, the Southern African Economic Community and the Caribbean Community);

(e) Relations between competition authorities and sectoral regulatory authorities;

(f) The link between Community rules and national rules in the administration of competition and the protection of consumers.

44. In December, a regional training workshop on competition law enforcement was organized by the Middle East and North Africa Region programme in Tunis for 40 delegates from 5 countries. The purpose of the workshop was to familiarize participants with the principles of competitive neutrality, definition of the relevant market, abuse of dominant position and investigation techniques to build capacities for effective competition law enforcement in the region. Participants also discussed the guidelines on competitive neutrality.

45. Under the same project, in February 2018, a consumer protection training centre was inaugurated in Egypt, linked to the training centre of Lebanon. The training centre is designed to deliver capacity-building activities in English for beneficiaries in the Middle East and North Africa Region. Further, a regional consumer protection workshop was organized to present and validate the guidelines on consumer protection agency structure effectiveness, on business engagement for consumer protection and on consumer associations.

46. COMPAL also facilitated an internship from February to May of an official of the competition authority of Chile to the competition commission of Switzerland to learn about the screening method for detecting cartels.

47. UNCTAD revised and issued the *Manual on Consumer Protection*.[11] The 2017 edition is the first comprehensive international reference in this field, aiming to support developing countries and countries with economies in transition in their choice of policies and providing practical tools to assist policymakers in enhancing capacities while implementing the recently revised guidelines for consumer protection.

[11] UNCTAD, 2017, *Manual on Consumer Protection* (United Nations publication, New York and Geneva).

D. Digital tools and market studies: Knowledge management platforms and market studies

48. UNCTAD worked in cooperation with the Japan Fair Trade Commission, the Japan International Cooperation Agency and the Indonesian Competition Authority in conducting a study to assess competition in the market for six agricultural products (rice, beef, sugar, chili, shallots and salt). The study was funded by the Japan International Cooperation Agency, while the participation of UNCTAD in the relevant workshops (February, Tokyo to discuss market studies and November, Jakarta to discuss the final draft of the Indonesian market study) was funded by the Japan Fair Trade Commission. UNCTAD contributed significantly to the setting up of terms of reference for the study and comments on the first and final drafts of the study report.

49. UNCTAD assessed studies conducted by the Central African Economic and Monetary Community in two strategic sectors (telecommunication and energy) for the economic integration in Central Africa, to launch investigation on potential anticompetitive practices that might exist in the above-mentioned sectors. The aim of these investigations is to promote a smooth functioning of markets in these key sectors.

E. Strengthening partnerships and furthering South–South cooperation: Expert meetings, international and regional forums and partnerships

50. UNCTAD promoted the participation of delegates from El Salvador, Ethiopia, Paraguay and the Middle East and North Africa Region at the second session of the Intergovernmental Group of Experts on Consumer Protection (3 and 4 July 2017) as well as at the sixteenth session of the Intergovernmental Group of Experts on Competition Law and Policy (5–7 July 2017).

51. The International Forum on Consumer Protection is a COMPAL initiative that enables professionals linked to consumer protection and the public in general to discuss and exchange regional concerns and priorities on consumer protection. The ultimate objective is to improve the cooperative relationships between COMPAL members and themselves with stakeholders in civil society, business and consumers. The seventh edition of the Forum took place in Mendoza, Argentina, in September and brought together 80 experts from 10 different countries. Women accounted for 65 per cent of the participants, and their active involvement was promoted by the participation in the panels. The Forum addressed the following issues: the relationship between development, competitiveness and consumer protection in Latin America; how to foster consumer confidence in regional markets and citizens' participation in consumer protection policies; sustainable consumption of food; cryptocurrencies; tools for development; and the protection of tourist consumers.

52. In November, COMPAL and the Latin American and Caribbean Economic System serviced the seventh Annual Meeting of the Working Group on Trade and Competition in San Salvador. The event gathered 70 delegates, most of whom were women, from competition and trade authorities from 17 countries to debate on trade and competition in the digital era and on the impact of non-tariff measures on competition. The Competition and Consumer Protection Branch and Trade Analysis Branch were responsible for the second day of the meeting on the impact of such measures on competition, in which a background document[12] was presented, followed by break-out sessions to discuss a case study. The sessions concluded that non-tariff measures are relevant to the mandate of competition authorities, although there has been little case law on the issue. The authorities represented expressed their appreciation for the introduction to UNCTAD work on such measures and showed a keen interest in collaborative work on the topic.

53. COMPAL has successfully built partnerships with the Spanish Agency for International Development Cooperation and with the Secretariat of the Latin American and

[12] State Secretariat for Economic Affairs of Switzerland and UNTAD, n.d., Las medidas no arancelarias y su impact en la competencia, available at https://unctadcompal.org/documento/las-medidas-no-arancelarias-impacto-la-competencia/ (accessed 29 April 2018).

Caribbean Economic System, which has reduced operational costs and enhanced impact and coherency. In the field of consumer protection, the relationship has been strengthened with the Ibero-American Forum of Governmental Consumer Protection Agencies allowing a solid debate at intergovernmental and closed levels, of the issues discussed multilaterally in the framework of COMPAL.

54. In November, the Sofia Competition Forum celebrated its tenth meeting in Sofia. The Forum gathered 80 representatives of competition authorities from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Georgia, Kosovo (United Nations Administrative Region, Security Council resolution 1244 (1999)), Montenegro, the former Yugoslav Republic of Macedonia and Serbia, as well as delegates from the European Commission, the Organization for Economic Cooperation and Development and representatives of the competition authorities of Austria and Italy to exchange experiences on cases and enforcement. More than half of the attendees were women. The discussion focused on best world practices of investigating cartel cases and on information exchange between agencies.

55. In 2017, the UNCTAD secretariat received technical assistance requests on competition and consumer law and policy from member States and regional institutions. At the national level, requests for technical assistance was received from Belarus, Bhutan and Viet Nam.

56. At the regional level, the secretariat received requests from the East African Community Competition Authority, the Competition Directorate of the Common Market for Eastern and Southern Africa and the Economic Community of West African States.

57. As part of the assistance provided to the West African Economic and Monetary Union on competition from 2011–2014, UNCTAD in April 2017 organized a retreat in cooperation with the Competition Directorate of the Union to assess the report on its draft merger regulation. Completion of the work is still pending.

IV. Impact and lessons learned

58. UNCTAD provided assistance to Ethiopia by preparing a report on the status of competition policy, enhancing the knowledge of officials of the Trade Competition and Consumer Protection Authority and the Government on barriers to competition in the Ethiopian economy and measures needed to reduce them. The information provided to stakeholders on legal and institutional reforms contributed to improving the legal framework towards enhancing competitive markets in Ethiopia. It also helped in the design of soft law tools for better implementation of the competition law in the country. The report is one of the reference documents for the upcoming market studies in the iron and steel sector.

59. UNCTAD also conducted the development of soft law in Ethiopia (guidelines on mergers and abuse of dominance, on market analysis and definition of relevant markets, regulation on unfair commercial practices, investigation manual for case handlers), which facilitated better implementation of the competition law and the review of the Trade Competition and Consumer Protection Proclamation. The review is based on enforcement experience and government policy change. The Government decided to reassign the enforcement of criminal sanctions specified in the Proclamation to the Office of the Prosecutor General. To respond to this change and reflect the recommendations made in the drafting of guidelines and regulations, the drafting committee revised the Proclamation. This exercise also helped build local law-drafting capacities in Ethiopia.

60. In COMPAL, activities were successful and well received by the beneficiaries. The joint National Institute for the Defence of Competition and the Protection of Intellectual Property–COMPAL School courses were the highest valued activities of the programme in 2017, rated overall as "very good and relevant for the daily work of the agencies". National replications of this course on consumer protection were completed in September 2017, and 461 people received training on campaigns of education for consumers and of compliance for companies. Replications for the joint course on

competition were completed in March 2018, with a total of 291 people trained in investigation techniques. Courses for judges on competition and consumer protection were highly appreciated by participants, who gave a rating of 4.75/5 on the overall utility of the courses. Beneficiary agencies considered that the training given to judges in their countries had facilitated their daily work.

61. Argentina reported that the effectiveness of the capacity-building activities implemented in the frame of COMPAL were high. Various theoretical aspects on investigations techniques in the detection of cartels as well as on leniency programmes were combined with successful experiences in the region. The comparative analysis helped identify shortcomings and make an assessment to strengthen the quality and effectiveness of the tools available in Argentina, especially with the recent implementation of the leniency programme.

62. In 2017, the Middle East and North Africa Region programme underwent a reorientation of objectives, aiming to increase its regional focus and adapt activities, namely training, to the needs of the beneficiaries. The discussion and validation of several sets of guiding instruments on competition and consumer protection with the beneficiaries helped bring together national experts and various stakeholders, which is crucial to improving the competition culture and consumer protection awareness.

63. Experiences of more advanced countries providing technical assistance in competition and consumer protection reported that the focus of the assistance should be on assessing recipients' needs. The competition authority of Japan reported that the feedback of their trainees was positive. According to more than 90 per cent of trainees, the knowledge and experience they acquired in the training courses were useful. The Authority stated that donors could implement technical assistance activities more efficiently by avoiding overlaps among them. By the same token, the Competition and Markets Authority of the United Kingdom of Great Britain and Northern Ireland appreciated from anecdotal feedback that the assistance provided had been well received and considered useful. In addition, the Authority found the measures valuable in furthering mutual understanding between national authorities.

64. The regional advocacy seminar on competition and consumer protection for the beneficiary countries of the Central African Economic and Monetary Community provided participants with a better understanding of competition and consumer policy issues at the international level, on their role in implementing reforms in market-oriented economies in general and their contribution to mainstreaming competition and consumer policies in regional economic integration in Central Africa in particular.

65. It is expected that this project will contribute to the improvement of the business environment in the region with a view to building a competitive subregional economy that is better integrated into the world economy.